

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN MIKE COONEY**, on April 6, 2005 at 8:00 A.M., in Room 317 Capitol.

ROLL CALL

Members Present:

Sen. Mike Cooney, Chairman (D)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. John Brueggeman (R)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Steven Gallus (D)
Sen. Ken (Kim) Hansen (D)
Sen. Bob Hawks (D)
Sen. Bob Keenan (R)
Sen. Rick Laible (R)
Sen. Lane L. Larson (D)
Sen. Greg Lind (D)
Sen. Don Ryan (D)
Sen. Trudi Schmidt (D)
Sen. Jon Tester (D)
Sen. Carol Williams (D)

Members Excused: Sen. Corey Stapleton (R)
Sen. Dan Weinberg (D)

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary
Taryn Purdy, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 18, 3/30/2005; HB 76, 3/30/2005;
HB 181, 3/30/2005; HB 148,
3/30/2005; HB 379, 3/30/2005; HB
249, 3/30/2005; HB 35, 3/30/2005;

HB 476, 3/30/2005; HB 796,
3/30/2005; HB 277, 3/30/2005
Executive Action: HB 796; HB 379; HB 35; HB 6; HB 11;
HB 5

HEARING ON HB 18

Opening Statement by Sponsor:

REP. CAROL JUNEAU (D), HD 16, Browning, opened the hearing on **HB 18**, Extend duration of state-tribal economic development commission. The bill would extend the commission for four more years and allow them to use the balance of funds available as carryover to continue paying for meeting expenses. The State Tribal Economic Development Commission is a group of representatives from all seven reservations, as well as the Little Shell, that meet with the state and discuss economic development issues that are pertinent to their reservations or economic development plans that might be helpful to Montana reservation communities.

Proponents' Testimony:

Evan Barrett, Governor's Office of Economic Development, rose in support of the legislation. Even though the provision in the bill to add someone from their office to the commission was stripped out, he did not think that would necessitate this bill going back to the House. This commission is an important mechanism to have a formal vehicle to have each of the Tribes work with his office on laying out the plans and long-term objectives in economic development as it relates to Indian Country. The commission started out slowly but has been doing some good work. The money in the bill is a continuation of the existing money that has already been appropriated and has no impact on the ending fund balance.

Andy Poole, Department of Commerce, advised he has been on the commission since 1999 when the commission was formed. The commission is an excellent vehicle for the state and each of the Tribes to talk about economic development on the reservations in Montana. It is good for the state to understand what kind of economic development projects are underway, what needs to happen on the reservations, and how potentially the state can help with those projects. It has been invaluable to the Tribes to be able to share information among themselves about what has been working on their reservation and things that other tribes can try. He encouraged the committee and the Legislature to pass this bill as a communication tool between the Tribes and the state of Montana

for economic development purposes. He said it was critical for the future economic development for the reservations in Montana.

Paul Tuss, Bearpaw Development Corporation and Montana Economic Developers Association. They strongly support the bill and recommend its passage out of this committee. This is an important piece of legislation in this session to understand what is happening with economic development on tribal lands and in Indian Country throughout Montana.

Joni Stewart, Gain Development, advised Glacier County has one of the highest unemployment percentages in the state. They rank between 12 percent and 15 percent, and that is solely because of the Indian reservation located within the county. It is difficult to find ways to promote economic development on the reservations, and supporting this bill and this commission gives them some chance to do that. She urged support for the bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. RICK LAIBLE asked **Mr. Barrett** to confirm whether the funding was a carryover from last session. **Mr. Barrett** confirmed it was a carryover of previous monies that were allocated to the commission. Originally, it was \$200,000, and there is \$120,000 left.

SEN. JON TESTER asked about the federal special revenue of \$2 million and whether that reflects any actual source of funding. **Mr. Barrett** advised that is not necessary because unanticipated federal monies can be covered by budget amendment. It is contingent availability should they be able to leverage some federal grants. **SEN. TESTER** asked how many years this Tribal Economic Commission has been around. **REP. JUNEAU** stated this bill was sponsored by **REP. EGGERS** in 1999 and was called the Indian Economic Development Act. The commission was organized shortly after passage of the bill. **SEN. TESTER** asked what the state's commitment to this program has been from a funding standpoint in the past. **REP. JUNEAU** replied the original commitment in 1999 was \$200,000 from the general fund. That is still being utilized for meeting expenses.

SEN. KEITH BALES expressed confusion about appropriating \$120,000. **Mr. Barrett** had testified this is the amount that is left over, and the money is to be used for expenses for meetings. He wondered if there had been no meetings. **Taryn Purdy,**

Legislative Fiscal Division responded because the legislation was going to expire at the end of the current biennium, this money would have reverted to the general fund. They are asking to be able to spend that money into the next biennium. She recalled that most of the money was spent on meeting expenses. **SEN. BALES** asked if this is considered a new appropriation. **Ms. Purdy** advised, it is. It is required to be re-appropriated every two years and to continue the legislation that enables it.

SEN. GREG BARKUS asked about the history of the termination clause and the amendment history. He wondered about the rationale. **REP. JUNEAU** answered the State Tribal Relations Committee heard this request during the interim and approved this bill to be brought forward to the Legislature, they were looking at extending it for two years to 2007. In the process they went to a four-year term to 2009. The bill would have terminated in 2005. **SEN. BARKUS** asked why they were looking at terminating this; if this is a good program he wondered why it should not be funded permanently. **REP. JUNEAU** replied if they continued without an appropriation they would have no resources. **SEN. BARKUS** asked about the accomplishments of the commission. **REP. JUNEAU** deferred the question to **Mr. Poole**. **Mr. Poole** remarked when the commission formed in 1999 it took more than six months to form. One of the early things the commission was responsible for was an economic analysis of the conditions on each of the reservations in Montana. It was performed by RJS and Associates and cost around \$50,000. When the study was completed many people on the different reservations did not like the data that came out of that study and did not think it was accurate. Since that time the commission published a follow-up analysis by **Paul Polzin, University of Montana**. The early work of the commission documented the economic conditions on the reservations, and they want to document the positive benefit the reservations of Montana have on the economy of Montana. Over and above these studies and trying to document the economic conditions on the reservations the value has been each of the reservations getting together and discussing various economic opportunities. **SEN. BARKUS** asked if anything has been done for the tribes other than put money into economic studies. **Mr. Poole** advised the commission spent less than \$100,000 in any one year. The initial appropriation was \$350,000 and there is \$120,000 unexpended. The economic analysis that has occurred has value. **SEN. BARKUS** said he was looking for results and wondered if this is a failed system. **Mr. Poole** did not think this was a failed system. He thought it had early difficulties, but has started to gel. Members who are on the commission currently are serious about what they are doing. The commission looked at the issue of land ownership and the ability to get commercial loans on the reservations. Another issue is small business technical assistance and the re-creation of the

Tribal Business Information Centers that were de-funded by the federal government about five years ago. He stated they are not going to be able to recruit large businesses to the reservation. Small business is the way the economy on the reservations is going to improve. He thought there was value going forward with this commission. **SEN. BARKUS** asked **Mr. Barrett** to comment. **Mr. Barrett** observed this commission is not an economic development delivery vehicle. This commission can help with the planning and the communication. The reason this is important to be continued is that it is part of an integrated approach and the commitment of the Administration to focus on Indian economic development.

SEN. TRUDY SCHMIDT asked if there have been positive results from the commission. **REP. JUNEAU** advised there were some problems getting this organized. One of the problems was there was no permanent Coordinator of Indian Affairs in the capitol for the last three or four years. The Coordinator of Indian Affairs is the one responsible for making sure these meetings happen and for organization. The commission co-sponsors the Montana/Wyoming Economic Development Summit and developed memorandums of understanding with all Tribal nations and the Office of Economic Opportunity. There was a memo of understanding with Northrup Drummond which resulted in a partnership of tribal industries for a joint IT project and ongoing assistance for tribal nations.

SEN. SCHMIDT asked why the member of the Governor's Economic Development Office had been taken out of the bill. **REP. JUNEAU** replied this was taken out in the House Appropriations Committee. They thought the Office of Economic Development should attend and participate but did not need to be a voting member of the commission.

Closing by Sponsor:

REP. JUNEAU clarified there was an original \$200,000 appropriation and that was all the state money that was ever appropriated. She thought this was a good thing to continue. The Governor's Office of Economic Development seems to be committed to working with the tribal nations in building economic development, and this is part of the strategy to get that done.

HEARING ON HB 76

{Tape: 1; Side: A; Approx. Time Counter: 26.6}

Opening Statement by Sponsor:

REP. ROSALIE (ROSIE) BUZZAS (D), HD 93, Missoula, opened the hearing on **HB 76**, Establish rainy day fund. The bill was

requested and recommended by the Legislative Interim Finance Committee. HB 76 establishes a budget stabilization account for the state of Montana, authorizes how the account may be spent, and provides a cap to the fund. It is stated in Section 1 that except for \$16 million that could be spent from the fund by the Governor for disasters and emergencies, any other expenditures from the fund would require a two-thirds vote by both houses of the Legislature. New Section 2 requires that one percent of the actual unrestricted revenue collections received in the completed fiscal year be set aside for the budget stabilization account. At the end of the biennium 100 percent of the previous two fiscal year's revenue in excess of the most recent general fund revenue estimating resolutions for that biennium would be deposited into the fund. If the transfer would result in the budget stabilization account reaching a sum of ten percent of the previous two fiscal year's average general fund revenue the amount of unanticipated balance in excess of the ten percent limit must remain in the general fund. It takes one percent of the first year's revenue, sets it aside, and at the end of that biennium would deposit it into the stabilization account. If there are unanticipated revenues it would bump up a notch. It is anticipated that the budget stabilization account would be capped at around \$100 million. Forty-seven states currently have rainy day funds, and these funds sustained them through the tough budget years similar to the last biennium. The Montana legislature does not budget for things like forest fires. Homeland defense may be a possible expense. If federal support for Medicaid decreases dramatically, they may have to come up with a significant amount of dollars to backfill the Medicaid program. A budget stabilization account would allow the state to meet these unforeseen shortfalls. There were five rainy day fund bills in the last session. Former chairman of House Appropriations **REP. DAVE LEWIS** asked all the sponsors of those bills to hammer out one bill that everybody could agree on. The bill before the committee is that bill. It was designed by a bipartisan group and received strong support when it advanced to the floor and passed the House. Last session it was tabled in the Senate Finance Committee. The Chairman of the committee at that time did not think it was a good idea. He supported the concept in the Interim Finance Committee where this issue was discussed. The bill was supported unanimously by the Finance Committee.

{Tape: 1; Side: B}

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. LAIBLE asked about the requirement for a two-thirds majority vote in order to appropriate funds from the rainy day fund and whether this would be like the coal trust and become a political issue instead of an economic issue. **REP. BUZZAS** did not want the fund to be easy to get to. It would accumulate about \$14 million a year. The committee felt it needed some safeguards. The Coal Tax Trust Fund is a reason a fund like this is needed. The Coal Tax Trust Fund was seen by many as a rainy day fund, and it was never intended to be a rainy day fund. The Coal Tax Trust Fund is there for a very specific purpose as designed in the Constitution, and it is a working asset for the state. A budget stabilization account would take away some of that discussion about the Coal Tax Trust Fund. **SEN. LAIBLE** inquired about the ten percent amount at which this would be capped. **REP. BUZZAS** deferred the question to **Terry Johnson, Legislative Fiscal Division**. **Mr. Johnson** advised in terms of the capping mechanism it would turn out to be \$140 million and would fluctuate depending on the revenue. As the revenue grows, the cap would correspondingly grow. **SEN. LAIBLE** said the \$14 million a year average would take ten years if the Legislature does not take any money out. **Mr. Johnson** said that is correct. There is a secondary provision in the bill that not only takes the one percent of annual revenues but any excess over and above the revenue estimates is also channeled into the rainy day fund or stabilization fund. **SEN. LAIBLE** said this could be built up quickly if there are some good years in the future. **Mr. Johnson** said that is correct. It depends a lot on the accuracy of the revenue estimates, but if there is excess revenue generated from various tax sources it would immediately flow into that.

SEN. BALES supported the statement that the Finance Committee unanimously endorsed the bill. The previous Chairman of the Senate Finance and Claims Committee thought if there was extra money that the taxpayers were being taxed too much. The former chairman may have changed his mind after what they went through in the last biennium. He asked about the change in the effective date. **REP. BUZZAS** advised she drafted the bill in early fall before the Supreme Court decision on school funding. The impact of an immediate effective date would have been a \$135 million hit to the general fund balance. **SEN. BALES** asked if there was any thought of starting to develop a portion of the fund sooner. **REP. BUZZAS** said that was discussed, but this is where the discussion ended up.

SEN. KEN HANSEN asked why **REP. BUZZAS** did not sign the fiscal note. **REP. BUZZAS** advised she merely overlooked it. She said the technical notes needed some clarification.

SEN. DON RYAN how much would currently be in a rainy day fund had one been in existence during this last biennium. **Mr. Johnson** said the original fiscal note addressed the \$135 million. That was based on January information. The Senate Taxation Committee adjusted the revenue estimates for 2005 yesterday. They increased it by \$15 million in 2005, so there would probably be \$150 million that would go into the stabilization fund. **SEN. RYAN** asked **REP. BUZZAS** if the rainy day fund collects interest but is there as a savings account. **REP. BUZZAS** said that is correct. **SEN. RYAN** asked how they would justify not being able to get a two-thirds vote from the Legislature to get into the state's savings account. **REP. BUZZAS** thought that was a legitimate discussion. She did not think it was an unreasonable amount. Other states seem to have dealt with this over the years. **SEN. RYAN** did not have a problem with what the Legislature does when they are here; it is the campaigning. This would be a campaign tool and could be detrimental to the state.

SEN. JOHN COBB asked if there would be a technical amendment. **REP. BUZZAS** said she would be happy to work with the fiscal division to get that straightened out. **SEN. COBB** noted a simple majority could change the two-thirds vote any time.

SEN. BARKUS advised he works in the investment business where one of the principle ways to become successful in personal savings is to pay yourself first. This Legislature came in with a \$300 million projected surplus, yet is unwilling to institute a savings plan judging by the way the bill has been amended. **REP. BUZZAS** replied she would like to see this in place. They did not anticipate the school funding lawsuit and the impact that would have on this Legislature. She felt if they do not put this in place this session it will be forgotten. It is easier to do something like this when revenue is coming in. A lot of institutional memory about these issues is being lost as term limits kick in more and more every year. This is a fiscally responsible thing to do this session. **SEN. BARKUS** referred to the comment by **SEN. RYAN** about the taxpayer's dollars. He inquired if the taxpayer would respect the Legislature more if a responsible savings program was established to take care of emergencies in the future. **REP. BUZZAS** agreed. The taxpayers understand savings accounts, and she thought they would appreciate this being in place so the Legislature would not have to increase taxes in the future.

SEN. LAIBLE asked **Mr. Johnson** about getting a two-thirds vote. There is no flexibility for the Legislature because all the money would go into the general fund or the budget stabilization; it is not a percentage. **Mr. Johnson** replied there are two provisions in the bill. One is taking one percent of annual revenue in a planned savings. If this would have been in effect, the cap would have been reached with the current excess revenues. In terms of accessing those dollars, there is a provision that the Governor has the authority to tap into this stabilization account for emergencies. That relieves the general fund from those emergency costs being funded out of the stabilization account up to \$16 million. He agreed a two-thirds vote creates a situation where the Legislature has dollars available in a budgetary session with a special requirement to access those dollars. As **SEN. COBB** pointed out that can be easily amended by a simple majority. The various bills last session were designed to provide tax relief, and he thought that might have been where the two-thirds vote came from.

SEN. BALES asked if the Governor can expend more money than the \$500,000. **Mr. Johnson** advised there are actually two emergency account. 10-3-312 speaks specifically to the \$16 million emergency appropriation the Governor has, but in addition to that there is a \$500,000 appropriation tied to a federal emergency for that purpose. **SEN. BALES** asked what the total amount was. **Mr. Johnson** indicated, in terms of the cap, it was about \$140 million. **SEN. BALES** wondered if there was discussion about a percentage of that in one biennium. Often a budget crisis may last more than one biennium. If the full amount is used in the first biennium, the second biennium might be worse. **Mr. Johnson** did not believe there was any discussion about drawing that down to a certain level for each biennium.

Closing by Sponsor:

REP. BUZZAS said there are not a lot of proponents and opponents on this bill because it is a fiscal policy decision. This is the only rainy day fund bill that is still alive. It has worked well for 47 states and can work well for Montana.

HEARING ON HB 181

{Tape: 1; Side: B; Approx. Time Counter: 29.2}

Opening Statement by Sponsor:

REP. JOHN MUSGROVE (D), HD 34, Havre, opened the hearing on **HB 181**, Increasing funding and adjusting benefits in TRS. The Montana Constitution requires that all public retirement systems be funded on an actuarially sound basis. Without additional contributions the Teachers Retirement System (TRS) is not currently funded on an actuarially sound basis. HB 181 increases the TRS employer contribution rate by 1.2 percent effective July 2005, 1.2 percent in July of 2007, and .75 percent increase in 2009. That is a big hit for the employers contribution and for the local governments. As soon as the system is stable enough to maintain an amortization period of 25 years, the bill will sunset.

{Tape: 2; Side: A}

The University System contribution rate is required to fund their share of the unfunded liabilities because of the optional retirement program, adding .56 percent in 2005 and an additional .56 percent in 2007. This is in the Governor's budget, and **Budget Director David Ewer** asked **REP. MUSGROVE** to relay how critically important both HB 181 and HB 148 are to get back to an actuarially sound basis.

Proponents' Testimony:

David Senn, TRS, distributed information to the committee.

EXHIBIT(fcs73a01)

Actuarially funding the retirement system is collecting employer and employee contributions and investment earnings. Investment earnings will be the largest source for funding retirement benefits. There were great returns on investments in the late 1990s. The Teachers Retirement Board was assuming they would make an eight percent return on investments. They do not use all of that return on evaluation in a given year. Those excess earnings and losses are smoothed over five years. In the late 1990s benefits were increased by 1.5 percent. There were additional excess reserves at that time. It was not enough to offset the losses in 2001 and 2002. That amounted to a 15 percent loss in the eyes of the actuary. Smoothing those gains was not enough to absorb those losses. The year 2004 was another good year and there were some improvements, but they are over the 30 years amortization period. There are \$131 million in unrecognized losses that are not in the actuary numbers at this point in time. An actuarially sound basis means the amortization period has to be 30 years or less. HB 181 would prop up the fund for TRS but does not put a permanent increase in the contribution rates. Those rates will come down or be required to be reduced

as the retirement system can amortize liabilities over twenty-five years or less. Hopefully those rates can be reduced in two years. The fiscal note shows the general fund costs are approximately \$2.1 million per year, and the school districts' cost will be approximately \$5.1 million. The employer contribution rate will return to the 7.47 percent as the system is actuarially funded. HB 181 will also increase the University's contribution rate for the optional retirement program. In 1987 the Legislature created an option for university faculty and administrators who up until that time were required to participate in TRS. This is a private annuity that a lot of universities in higher education participate in. In order to maintain the funding of TRS, the Legislature said they had to continue to collect a contribution rate on those salaries. There is an unfunded liability that has to be funded and that was funded as a percentage of all salaries. The valuation of the TRS is completed every two years, and the last valuation determined that the amortization is no longer thirty years or less and the unfunded liabilities increased from \$383 million to \$757 million. The actuary report showed that if they wanted to increase the contribution rate all at once the rate of 2.87 percent would be required or that rate could be phased in over a series of years which is what HB 181 proposes to do. The actuary report also indicated that there is \$131 million in unrecognized actuary losses and that if future gains are not sufficient to take care of these losses that contributions rates could increase further in the future. As they completed the actuary evaluation they worked with the Legislative Auditor's office to complete the study of an audit review of evaluation. The Legislative Auditor's Division, the Public Employee Retirement Board, and the Teachers Retirement Board issued an RFP and hired Mellon Human Resources. Mellon concurred with the results of the July 1, 2004 TRS actual evaluation. They also calculated the amortization period at 71.3 years. The Legislative Audit recommended that the TRS seek legislation for funding changes to insure the TRS is funded on an actuarially sound basis.

Tom Bilodeau, MEA-MFT, provided background on Montana's public pension security amendment. That amendment was brought forward as a legislative referendum brought forward by then **REP. BOB BROWN** and **REP. JUDY JACOBSON**. It was presented to the 1993 legislature and put on the ballot in the fall of 1994. That referendum for a Constitutional amendment was approved by 75 percent of the electorate. The electorate was given the opportunity to provide a constitutional protection for the actuarial soundness for all public pension programs. The electorate understood the importance of protecting these pensions and voted to do so. The MEA-MFT believes this bill puts them back on stable footing and is supported by the organizations that

participated in the public pension security coalition in the early 1990s.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. JOHN ESP said in audit committee they talked about the possibility of the necessity for new hires to increase the length of time needed for retirement. That was in the bill to begin with, and he wondered why that was removed in the House. **REP. MUSGROVE** replied one reason was the teacher shortage. It was a minimum part of the bill. **SEN. ESP** said in this biennium it was a minimal part but eventually it would add up to real money. **REP. MUSGROVE** agreed it would amount to real money down the road. **SEN. ESP** asked if there was any thought given to a compromise. **REP. MUSGROVE** did not know.

SEN. BALES referred to the fiscal note and inquired whether a large portion of this will come from local property taxes. **REP. MUSGROVE** advised the permissive levies that will go into place for the countywide retirement levies will impact local taxpayers. **SEN. BALES** thought it would be a little over \$4.5 million for K-12 per year to counties. **REP. MUSGROVE** indicated the total impact is somewhat over \$5 million per year of the biennium. **SEN. BALES** referred to the school federal funds in the bill and said SB 333 and SB 147 going through precludes any federal funds. **REP. MUSGROVE** said that assumption is correct. This was made before those bills were anticipated to pass. **SEN. BALES** said that would all come out of local property taxes then, and **REP. MUSGROVE** replied that is correct.

SEN. BOB HAWKS asked **Mr. Senn** how much the fund was beyond actuarial soundness. He noted it progresses upward rather quickly when it is underfunded. He asked what rationale was used for the rate of increase contributions. **Mr. Senn** replied the actuary that they contracted with calculated the amortization period at 71.3 years. **SEN. HAWKS** inquired whether the 71.3 years represents a very sudden rise and if it sounds much worse than it is. **Mr. Senn** advised the increase is a sudden rise because of the losses. The unfunded liability of \$383 million to \$757 million was a huge increase, and nothing like that was ever seen in the past. If this legislation was not passed that 71 years probably would not increase a whole lot and would start to come down slowly. It would be like having a mortgage of 71 years. They would pay forever and not see any decrease in the principle;

it is all going to interest. The 1.2 percent each year of the biennium was done in negotiation with the budget office. They were looking at how much money they felt they had available to commit to the TRS in this biennium and going forward.

SEN. LAIBLE said the employees put 7.15 percent into an individual account for each employee. The bill calls for 8.67 percent in 2005 and 10.62 percent in 2009. He asked if that is attributed to the same employee fund or if it goes into a general accumulation fund. **Mr. Senn** replied the TRS benefits are based on the members years of service and final average salary. The amount that is in the employee account or the amount the employer contributes never goes into the calculation of that monthly benefit. It is a defined benefit plan. The employee has an account with the TRS but the only value in that account is if they terminate and are not eligible for benefits. Typically they will take a refund of their account balance that includes the money they put in plus some accrued interest. The employer contribution goes into a pension accumulation fund. That is used to pay benefits, and at the time of retirement the employees contributions are also rolled into that pension accumulation fund. Basically all the money is going into the pension accumulation fund but the employer and employee contribution rates are set through negotiation and policy by the Legislature. Once those rates are set for employees there is a contract in place protected under the Montana Constitution that they have a right to a certain level of benefits that have been promised. In return they will pay that employee contribution rate. **SEN. LAIBLE** referred to the chart **Mr. Senn** prepared. The problem came in when returns on investment for 2001 and 2002 were significantly under what they had been. That changed the amortization period dramatically. In 2004 it is back up 13.3 percent. He inquired what will happen if they do not fund this. **Mr. Senn** advised if they do not fund this that amortization period of 71.3 years will start to come down a little but will take a long time. The TRS will not meet the constitutional requirement to be actuarially funded. The bond rating for the state of Montana would be impacted by the adverse audit opinion received by the retirement system and the fact that it does not meet the constitutional requirement to be actuarially funded. If returns continue at the 13 percent or 14 percent the 71.3 will come down a little faster. Those excess earnings would be used to amortize the unfunded liability. They hope that will happen and that was why the bill was set up to reduce the rates as they get down to 25 years. The system would not need any additional supplemental contributions at that point. **SEN. LAIBLE** inquired when the rates went up to the 19 percent and 16 percent in 1997, 1998, and 1999 if there was a reduction to the state for their contribution to the accumulation fund or if it has always stayed

at the 7.47 percent. **Mr. Senn** replied it always stayed at the 7.47 percent.

SEN. BALES said property taxes will go up by a little over \$5 million a year during this biennium. If another 1.2 percent is added they will be up about \$10 million per year in the next biennium over what they are now. After that it will be somewhere around \$12 million a year. **Mr. Senn** confirmed that is correct.

SEN. BALES asked how and when the general fund money goes in.

Mr. Senn advised the school districts receive those general fund contributions through the guaranteed tax base (GTB) through the equalization funding. **SEN. BALES** asked how much money it would take to make the fund actuarially sound. He wondered if that would be another option rather than additional property taxes.

Mr. Senn said he would get that number for **SEN. BALES**.

SEN. ESP said the problem discussed in audit committee was people were living longer so the liability was lasting longer after people retire. The suggestion they heard was to move the allowable years up somewhat to begin to offset that to avoid the long-term implications. He inquired whether there is a significant long-term impact if this is not adjusted. **Mr. Senn** did not believe there was a significant long-term impact if they do not adjust those at this time. He believed they need to take a broader, more holistic approach to how they want to deliver retirement benefits to new teachers that are coming into the system. He believed people will continue to live longer. When the initial bill was proposed they were looking at a much larger increase than the 2.7 percent that would be required to make the system whole. Taking those changes out of the bill did not change the fiscal impact for the coming biennium or the next biennium out.

{Tape: 2; Side: B}

SEN. ESP asked **Mr. Senn** about doing something to change the years credited before retirement and if he did not think that is the right way to do it or just politically not the right way to do it. **Mr. Senn** did not think it was the right way to do it because of the difficulty of recruiting teachers and administrators in the state of Montana. There are critical shortages in a lot of areas, particularly specialty areas. To do something like this could make it more of a problem for schools to hire teachers and keep accreditation standards. He thought this was the wrong approach at this time.

SEN. SCHMIDT asked when the market return started going down whether anything could have been done differently that may be a lesson for the future. **Mr. Senn** replied the only increase in the

TRS since 1983 with any material impact on retirement benefits was in 1999. In 2001 the Legislature passed a law that gave the authority to the TRS to increase from 1.5 percent to 3 percent. The idea was to use excess earnings. By the time the session adjourned the Board decided not to increase. After 9/11 the market started to go down. He thought the market would have recovered after the terrorist attack if not for the Enron, Worldcom, and dot com collapse, the accounting and auditing fraud, etc. He could not see anything they could have done differently.

SEN. LIND asked **Mr. Senn** to comment on the holistic changes he referred to with respect to new teachers coming on board. He asked if **Mr. Senn** was alluding to changing from a defined benefit plan. **Mr. Senn** said he was not alluding to change the defined benefit to defined contribution. He thought that would exasperate the funding problems. It is not unlike what they did in 1987 with the University. The University had to pay a supplemental rate on top of what they were already paying for teachers retirement in order to keep the TRS whole. A more holistic approach would be to look at the demographics of people that are coming into the teaching profession and longevity. There is a smaller workforce in the United States than during the baby boom generation. At issue is the impact that will have on recruiting and retention of teachers and what kind of teachers are graduating. Those questions need to be answered, and he said he needs help beyond his expertise to look at that. People are living longer and maybe retirement should not be based on years of service but on age. People will move from job to job and that will not change. There are over 80 teachers retirement systems across the country that are looking at these issues.

SEN. BARKUS asked **Mr. Senn** to respond on his first comment on the actuarial funding. The investment returns shown on the table in **Mr. Senn's** presentation are from a small segment of history. The strongest bull market this market has seen for many years began about 1990 and went through 2000. Those years should have helped fund the TRS even beyond actuarial funding. He asked **Mr. Senn** to comment on his remark that because of the decline in market values following the collapse of the dot coms and the accounting and auditing fraud involved in various companies that TRS is no longer funded on an actuarial basis. **Mr. Senn** replied the market on 9/11 experienced a significant decline in market values. Some of those market values have come back. It was not until they saw some of the effects of Enron, Worldcom, and the collapse of the dot coms that the market became volatile. These numbers started to reflect in the investment returns and the fair market value of the retirement system. It made it much more difficult for the Board of Investments to get a return. In addition, the fair

market value of those assets declined. **SEN. BARKUS** observed from 1995 there were some good years with above average market returns. For the years 2001 and 2002 following 9/11, TRS only experienced a five percent and a seven percent loss, which are far lower than they would have experienced had they been 100 percent invested in those markets. The system is not actuarially unsound because of these events. **Mr. Senn** agreed it was not entirely because of these events that the system was actuarially unsound. His point in providing the numbers in the graph was these were great years and there was an increase in assets for the TRS. The amortization period went from almost 32 years down to 9.2 years. Had they not been smoothing those gains and not recognizing all of those in any one period, they would have been over 100 percent funded, and the TRS would have been in a far worse state had they not been smoothing those gains and losses. The TRS at this time is invested in about 60 percent equities and 40 percent fixed.

SEN. HAWKS asked if there had been a disproportionate increase in the number of retirements during this downturn period and if that is a significant factor in the actuarial projections or fund balances. He asked if they are facing a significant retirement population within a short period of time. **Mr. Senn** indicated in some districts 30 percent to 40 percent of teachers are eligible to retire. There has been an increase in the number of retirees over the last few years. When he started at TRS in 1986 there were about 300 retiring teachers per year. Now there are over 500 retiring teachers per year, and that number is expected to continue to grow. There has been no big jump in those numbers from year to year. They are expected to increase for a few years and then fall back.

Closing by Sponsor:

REP. MUSGROVE thanked the committee for a thorough hearing. He said he retired from teaching in 1998 when there was an amortization of 9.2. He had been looking forward to the 3 percent situation. He said they must maintain vigilance and keep the 1.5 until the bill itself does its work. He knows the market will come back strong enough to utilize the trigger. At that point he would like to revisit this and perhaps take the employers contribution from 7.47 down to 7.15.

HEARING ON HB 148

{Tape: 2; Side: B; Approx. Time Counter: 14.5}

Opening Statement by Sponsor:

REP. CAROL LAMBERT (R), HD 39, Broadus, opened the hearing on **HB 148**, Provide actuarial funding for the Public Employees, Sheriffs, and Game Wardens and Peace Officer retirement systems. The bill increases the membership rate by two-thirds of one percent. These funds are not actuarially sound, which means they cannot be amortized at 30 years. She was on the retirement board until she was elected to the Legislature. The Montana Constitution requires that the retirement system is actuarially funded. When the bill was heard in the House, the House focused on the Board of Investments. The Board of Investments invests the state money; however, the Legislature gives them guidelines. All of the money is invested in AAA or AA stock. They did not make unsound investments in her estimation. It was something beyond their control; it was the stock market. She did not want anything she said to reflect on the Board of Investments. The two-thirds of one percent which would be raised this biennium and another two-thirds of one percent in the next biennium is a small increase to make the system whole and is already in HB 2. Whenever the retirement systems are actuarially funded this will end.

Proponents' Testimony:

Mike O'Connor, Public Employee Retirement Administration (PERA), explained the Montana Constitution says retirement systems shall be funded on an actuarially sound basis. The legislative audit report of December 2004 made the recommendation that the retirement board seek legislation to correct the funding issues for PERS, the Sheriff's retirement system, and the game warden system. They knew the valuation that was performed in July of 2004 would be a very important valuation. They worked with the Legislative Auditor to have a full scope audit done on that valuation. They contracted with an independent actuary that did another valuation on the same data and came up with the same results. His recommendation was they could rely on the findings in the 2004 valuation. The definition of actuarially sound in the statute is the ability to pay the normal costs and also the unfunded liabilities over a period of no more than 30 years. He used the example of a mortgage to illustrate unfunded liability. He distributed information to the committee.

EXHIBIT (fcs73a02)

Tom Schneider, Montana Public Employees Association, testified he has been involved with the Montana retirement system since 1956 and stood in support of the bill. He had a lot of questions at the time the actuary brought the report forward. With the market gain this year he thought they might be able to get through this without having to do something to this degree. After looking at

the losses for that four year period he agreed a boost is needed. Until the 1973 constitutional change, the retirement systems did not and could not invest in the equity markets.

Leo Berry, Association of Retired Public Employees, stated he has been representing the Association since 1985. At that time an unfunded liability that was acceptable was 40 years. Because of the way the workforce has changed, with people retiring at different levels, the Actuarial Society reduced that down to 30 years. That is the basis of the constitutional requirement at this time. Prior to the 9/11 attack and the subsequent events, the PERS system was not only actuarially sound it had no unfunded liability and had a \$250 million surplus. He did not think those kind of events could have been anticipated. The fund is currently not in compliance and therefore this bill is necessary to bring the state of Montana into compliance.

Tom Bilodeau, MEA-MFT, urged support for the bill for the same reasons discussed on behalf of the 5,000 classified members in the school state employment covered by PERS and the game warden system.

{Tape: 3; Side: A}

1Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. LIND said the last bill and this one are similar problems with somewhat different approaches. He asked **Mr. O'Connor** to comment on any differences between the two systems and approaches to dealing with them. **Mr. O'Connor** said they are similar situations in not trying to get the systems back to actuarial soundness all in one biennium and when the systems are able to support themselves those additional contributions will go away. Both systems are invested by the Board of Investments. The differences are in the plan design and demographics.

Closing by Sponsor:

REP. LAMBERT thanked all those who spoke on the bill and for the questions. HB 148 is constitutionally mandated. It has been included in HB 2. The gradual increase of employer contributions is less than one percent of payroll. The increase will automatically sunset when it is no longer necessary. She asked for support for the bill.

SEN. DUANE GRIMES will carry the bill on the floor.

Recess 10:10

Reconvene 10:25

HEARING ON HB 379

{Tape: 3; Side: A; Approx. Time Counter: 3.0}

Opening Statement by Sponsor:

REP. JONATHAN WINDY BOY (D), HD 32, Box Elder, opened the hearing on **HB 379**, Fund Zortman-Landusky mine reclamation. A spreadsheet on the projected fund balance in the Resource Indemnity Trust after Senate Taxation Committee adjusted revenues was provided.

EXHIBIT (fcs73a03)

He was not sure if SB 489 would pass. He wanted to make sure the appropriation he would request would not have any impact on the existing projects with the Orphan Share. Historically there has been \$2.2 million going into this account, and with the projected revenue through FY 2007 that has increased from \$6.4 million to \$7.2 million in the projected 2007 biennium ending balance. The appropriated amount of the Zortman/Landusky Water Treatment is \$1.2 million a year which will leave the ending balance of the RIT Orphan Share at \$4.844 million. In House Appropriations there was a question regarding an analytical laboratory report, and that was distributed to the committee.

EXHIBIT (fcs73a04)

Two years ago when he proposed this bill, he was requesting \$12.5 million. He referred to page 26 of a staff paper presented by **Larry Mitchell, Department of Environmental Quality (DEQ)**, to the Environmental Quality Council in October 2004.

EXHIBIT (fcs73a05)

On page 24 it showed the existing short-term water treatment bond has been set at \$731,321 annually. That is the amount of the short-term water treatment bonds that were put in place by the now defunct Pegasus mining operation. The actual cost of the cleanup is greater. This bill addresses the long-term from the year 2018 in perpetuity. If this is not taken care of now, when the year 2018 comes around the state will be liable for roughly \$43 million.

Proponents' Testimony:

REP. JOHN MUSGROVE testified in favor of the bill. He described it as a pay me now or pay me later situation. **REP. WINDY BOY** brought forth a proposal two years ago that was less costly in the long run than this one will be. If the Legislature waits any longer, it will be even more costly. **REP. BOB BERGREN, HD 33**, wanted to go on record as supporting this legislation.

Julia Doney, Fort Belknap Community Council, brought greetings from the Gros Ventre and Assiniboine Tribes of Fort Belknap. She read from written testimony.

EXHIBIT (fcs73a06)

She added there is 78-80 percent unemployment on Fort Belknap, and over half of those live on the southern end of the reservation. Fort Belknap is made up of three communities at the agency at the northern end, and on the southern end is Hayes and Lodgepole. Those at the agency did not think the mines would affect them. In actuality underground water will get to them eventually as well as to Phillips County and other areas. Many at the northern end are employed and can buy water. The southern end residents cannot trust to drink the water even with the water treatment that is going on. They have to purchase water and it is very difficult. She never thought they would come to prefer to buy water. She described looking at all the pictures in the hearing room where crystal clear, pristine water is flowing in every one of those paintings. They cannot say that about Fort Belknap. Last fall they toured the mines and she collected water samples. She wanted to see for herself what happened after the water sat for awhile. She took those samples to have them tested at the college water quality lab. She continued reading from her written testimony. The mountains had been used as cultural fasting sites, but they can no longer be that. They can never again be sure that the water will be safe. The mountains cannot be fully restored with current technologies. The Hayes and Lodgepole residents are poor and do not have a store to buy bottled water. There are two small stores in the Hayes community. Lodgepole residents have to hire someone to take them 35 miles to purchase water if they can afford it. Many people fill water jugs at Snake Butte. Water is needed for drinking water, irrigation, and for livestock. The Fort Belknap Tribal Government is willing to sit down with committee members after the hearing to plan how to work together for safe water. They do not want to continue to burden the BLM. She recognized there are difficult decisions to make but this could be more costly later.

REP. MARGARET CAMPBELL, HD 31, Poplar, testified she was born and raised at Fort Belknap. The beautiful Little Rocky Mountains were a backdrop to her home and were meaningful in her life. There were no trails, and they rode mules. The streams were clear and the meadows pristine. She and her brother could catch fish with their hands, there were so many of them. When the mining started she was in Washington D.C. visiting then Congressman Pat Williams. She recalled being with a delegation from home. It was at the time that Pegasus wanted the support of the tribes. One of the tribal elders was traveling with the delegation at the time, and there was a conversation about the gold mining. The elder told them they would have to think about whether they wanted a bag of gold now or the mountains and water in the future. The Fort Belknap Tribes always opposed the mining. Early on there was a hearing in Malta and they all attended to object to the mine. She described that hearing as downright mean. Soon after the mining started animals were being born that were not right. Tribal members were reporting this at a hearing in Landusky, and she was outraged when those things were blamed not on the mining but because of all the alcoholism on the reservation. After the mining had been going about three years, she flew over the mountains and it was devastating. The mountain range that was the tallest had become a large pink hole without any trees. They used to be able to pick berries and there was a waterfall. Now the foliage has died and the water is discolored and not drinkable. She recalled when Catherine Halver pleaded against the mining. Her closing statement was the Tribes would be back every year. She hoped while Catherine is still with us she is able to see things happen in a good way to the devastation that occurred in those mountains that had a negative impact on life in Hayes and Lodgepole.

{Tape: 3; Side: B}

She asked that the committee please hear the testimony of those that come from Fort Belknap and urged a do concur in this Senate hearing.

SEN. KEN HANSEN, SD 17, Harlem, said when this started he was in SD 46, which included Fort Belknap reservation and Rocky Boy. When the district changed he was asked by the people of Fort Belknap not to forget them. He stated he will not forget them with this bill. As a child he spent a lot of time in Mission Canyon and the Zortman-Landusky area. They would swim, wade, and fish in the clean creeks and now it is totally turned around. He served on the state Tribal Interim Committee and they toured the Zortman Landusky mine. He described it as unbelievable. We have raped Mother Earth and he thought it was time to do what is right for that community and the residents.

Andrew Huff, Attorney, Fort Belknap Indian Community Council, said he represented the Council in litigation related to the mines and also in their efforts before the Montana State Legislature. He said he was available to answer technical questions.

Julie King Kulbeck, Assiniboine Tribe, and Fort Belknap Indian Community Council, thanked the committee for the time to speak on behalf of the people at Fort Belknap. She grew up in the Little Rocky Mountains. There are a lot of enrolled members there and she had family that lived in the Little Rockies. She asked the committee to consider that without funding of the water treatment plant this plant will not function. Assurance of the perpetual operation of the water treatment in order to protect surface and ground water from acid mine drainage is of tremendous concern to the people on the reservation and the surrounding area. Lack of proper environmental safeguards has led to expensive cleanup problems. They have experienced the damage to their environment, and their mountains will never be restored. They have experienced the loss of their fish and wildlife habitat. They are very concerned for the health and safety of their people due to the contamination. They can never be assured that the water will ever be safe. They have been told that the treatment will have to go on forever. She asked for support for the bill.

Tom Livers, DEQ, stated support for HB 379. The Department worked with **Mr. Huff, REP. WINDY BOY,** and the budget office, and he stated the budget office also supports this bill. This bill provides funding for a trust account to fund ongoing perpetual water treatment at Zortman Landusky. Water treatment is a serious complication of the acid rock drainage that resulted from the mining operation. The bulk of the work has been funded through reclamation bonds or other security instruments, but this is an area of reclamation that is not adequately funded through those mechanisms. As part of the consent decree there needs to be a mechanism in place to fund ongoing water treatment in 2018. The plan is to have a trust fund of \$34.1 million by 2018. There is a shortfall of \$19.3 million, and this bill makes up for that shortfall. The funding is taken from the Orphan Share account, which is an RIT account designed for state superfund sites with multiple party ownerships. Typically that Orphan Share account covers the portion of those multiple party sites that is attributable to defunct entities. Although Zortman Landusky is not currently designated as a state superfund site, it almost certainly would qualify. The purpose of this bill is compatible with the purpose of Orphan Share. It funds the shortfall that is the result of the Pegasus bankruptcy. The Department had some serious concerns and worked with **REP. WINDY BOY** and **Mr. Huff** to address those concerns. Originally the bill would have diverted

all revenues in the Orphan Share to Zortman Landusky with serious consequences to the existing commitments in the Orphan Share account. The current bill takes only the amount needed to reach that \$19.3 million shortfall by the year 2018. Whenever that target is met, this provision will sunset. There are projects already in the pipeline for Orphan Share funding, and they wanted to make sure they meet those commitments. They ran a series of scenarios using the revenue projections from the Revenue and Transportation Committee. They also ran more conservative projections based on historical revenue from that account. They believe they can meet all existing obligations along with this bill. There are consequences to making this diversion, but it will move \$1.2 million from Orphan Share into this account. It will take about half of the revenue coming in to do that. The worst case would be if new Orphan Share projects come in the out years. It could potentially delay reimbursement of some of those accounts down the road. Projecting out for several biennia, they do not see that as an immediate problem. That is balanced against the fact that there is a serious existing problem at Zortman, and this is the appropriate funding mechanism to address this problem in the Department's opinion. The bill leaves open the possibility of other funding sources to augment this, which could eventually sunset the Orphan Share portion sooner. If federal funding is available it can go into this account as well.

Gary Amestoy, Helena, represented himself. He was with the Department of State Lands in the state regulatory program when many of the permits were issued at the Zortman Landusky mine. When they went through the permitting process they met with many of the people of the Tribe from Hayes and Lodgepole in public hearings at Malta. Many of the concerns were those that were raised today. They followed the state metal mine reclamation act and the Montana Environmental Policy Act, but since that time unanticipated and unaddressed problems have been found. Some of the commitments made by the developer at the time were not necessarily followed through with. He thought the state of Montana has role to play in this, as well as the federal government. He urged support for this bill because it is the right thing to do.

Kenneth Lewis, Assiniboine Representative, Fort Belknap, said his concern was the aquifers. The aquifers are like the blood in your veins. When you step on a rusty nail, blood poisoning happens. He urged support for the bill. This is a lot cheaper now than it will be later.

Paul Tuss, Bearpaw Development Corporation, testified they are an economic development district that includes this beautiful area of Montana. He asked the committee to imagine how to engage in

job training and economic development activities in a place where you cannot drink the water. There is a significant economic development risk if they do nothing. He strongly urged their concurrence with this bill.

Tracy "Ching" King, At-large Assiniboine Representative, Fort Belknap Community Council, said he looked at the paintings in the room when his sister, **Julie King Kulbeck**, was talking about growing up in the mountains. In each corner of the room there are blank spaces without pictures. He wondered if he got someone to paint pictures of the scarred up mountains and put them there if anyone would mind. October 8, 1895 was the date of the Grinnel Agreement where many of their elders were coerced into giving up the mountains at the time.

EXHIBIT (fcs73a07)

He said he comes from a family of tribal leaders and the name King is actually a government name. There have been billions taken out of the Zortman Landusky area. In the Grinnel agreement, Grinnel said at the time that if the land was not ceded back they would lose their rations and their children would starve. It is time to do something about the cleanup. Because of racism, many of his people could not work. He works construction, and people want to fight him or use racial slurs just because he is an Indian. They have never physically attacked him, and he does not condone violence. He quit working for a construction company after twenty years rather than endure those conditions. People look at Indians as if they are different. In reality, they all have feelings, they hurt, they bleed the same, and have children to worry about. He encouraged the committee to pass this bill. He spoke about cancers and lead in the water, and described the Indian Health Service as rationed health care.

Catherine Halver, Gros Ventre Tribe, testified she lives on the southeast corner of the Fort Belknap reservation. Her home is about 15 miles from the Pegasus gold mine. The closest community is Lodgepole. In that community, they are like a big family. When the mine started in 1979 they had no idea exactly what leach mining was. They found out, went to various meetings, and were assured there would be no impact on the reservation side. They asked numerous questions and were told it was the first mine of its kind ever. She asked them what assurance Pegasus could give that their water, air, and grass would not be affected. Pegasus could not answer because they did not know themselves. The mine assured them their water would not be contaminated because the water flows the other direction. The mine got bigger and the people were devastated to see their burial grounds bulldozed.

Spirit Mountain was used for fasting and vision quests and now it is gone. The area is contaminated by heavy metals and acid from the cyanide leach pads. There is nothing there that is not contaminated. There is a clinic at Hayes for the south country. The water is so bad there, that they cannot even get an x-ray there. They have to travel to Fort Belknap to get an x-ray or lab work.

{Tape: 4; Side: A}

They have to go to Zortman or Hardin to buy water. No one in their right mind would bathe a newborn baby or a sick person in this water. Water has to be hauled for everything. Native Americans rely on roots and berries, dig for wild turnips and wild carrots, use sage and sweetgrass, and use chokecherry bark in ceremonies. They have no idea if those are contaminated. She is quite sure it is. They use the leaves, berries, and bark from the chokecherry bush that relies on water to live. This is all part of their lives and culture. She said there has been a rise in thyroid problems to over 300 cases. In the community of Lodgepole there are approximately 300 people. Prostrate cancer is on the rise. If the water continues to be contaminated there will be no people there.

Jeff Barber, Montana Environmental Information Center, supported HB 379 and anything that helps clean up the mess at the Zortman Landusky mines. They supported it in its original form that diverted the entire revenue stream for Orphan Share, because they think this ought to be the top priority for the state to get this mine cleaned up. The state permitted the mine along with the federal government, and so is partly responsible for the mess up there. He asked that they please concur in HB 379.

Dean Stiffarm, Fort Belknap Tribe, gave a power point presentation.

EXHIBIT (fcs73a08)

A satellite photo showed that the mines could be seen from space. In 1888 their reservation was established for both the Assiniboine and Gros Ventre Tribes. In 1895 there was some trespassing on the reservation. Prospectors were mining the gold veins at night so they would not be discovered. The U.S. government sent out some agents to negotiate land being taken from the reservation. At the time English was a foreign language to the Tribes. They thought it was going to be a ten-year lease, and it was years later they found out that mountains were taken from the land base. He showed a picture of the mountains before and after mining. There was a lake that was 35 miles deep. When

Pegasus declared bankruptcy and left the site, there was an artesian well and they closed it up. The water table started rising in this pit and also rose in the northern wells. There was a lot of water diversion going on at the mines. Water that should have gone towards the northern drainage was being diverted to the south. In 2001 the state drained the artesian well and the water in the pit. A picture from 2002 showed the acid in the mine rock that is causing most of the impacts. A layer of limestone was added to neutralize the acidity from the rocks. A picture from September 2004 showed how they were trying to divert the water. HB 379 would create a trust fund to run a water treatment plant. He showed a treatment plant at the Landusky mine that used 1990s technology. The plants will have to be updated in the future to accommodate newer technology. The state spent \$3.5 million on a treatment system to treat cyanide, selenium, and nitrates. There were three tanks and they treat the selenium and nitrates, but the cyanide just "goes crazy". He showed pictures officials of the state and the tribes touring the mine site. He showed the Landusky mine site and the pits. He showed the water coming out of those pits towards the reservation. Where **Mr. Stiffarm** works they have a water quality department and send samples to a certified laboratory to compare water results with DEQ's contractors to make sure everybody gets the same results. This water will be coming down to their reservation and into their drinking water systems. Pegasus came in, made all their millions, and left. Meanwhile, unemployment on the reservation is almost 80 percent. Reservations are like third-world countries. **Mr. Stiffarm** further reported that the pH of the water in December 2004 was 3.3; neutral is about 7.5. There are no water quality standards to go by. There was then a short film presentation showing conditions at the former Pegasus mine and the problems with the water that the Gros Ventre and Assiniboine people are facing.

Opponents' Testimony: None.

Informational Testimony:

Barbara Smith, Legislative Fiscal Division, indicated she was there at the request of **REP. WINDY BOY** to answer any technical questions regarding the Orphan Share Fund.

Questions from Committee Members and Responses:

SEN. LIND asked if the Chair would entertain a do concur motion on HB 379. **CHAIRMAN COONEY** said he would be happy to except that there were members who were not there, and he had indicated votes would not occur until this afternoon.

SEN. CAROL WILLIAMS declared the questions have all been answered very well. She thought this was the best presentation before a committee in this legislative session. She congratulated the witnesses for coming here and doing such a wonderful job and thanked **REP. WINDY BOY**.

SEN. HAWKS asked **Mr. Livers** about the relationship with the EPA. **Mr. Livers** had stated this is not a state superfund site.

{Tape: 4; Side: B}

Mr. Livers replied there are several federal lands involved, and the BLM has designated the site as a federal superfund site recently as a means of accessing additional funds available for reclamation.

SEN. SCHMIDT inquired about the last sentence in the technical note. **Ms. Smith** clarified it would be distributed in the new biennium. The money will first go to the Orphan Share and then be transferred to the trust fund. **SEN. SCHMIDT** asked if the water treatment permanent trust fund is a new fund. **Ms. Smith** indicated it would be a new fund.

SEN. BARKUS asked why the technical note was not on the new fiscal note. **Mr. Livers** thought it had to do with the fact that the bill was initially crafted to divert Orphan Share funds and spoke to the whole mechanism of collecting taxes and making those diversions. When the Department subsequently met with **REP. WINDY BOY** and **Mr. Huff** that diversion was changed to a transfer from the Orphan Share account. He speculated that while that was a relevant point when dealing with a mechanism to bring those taxes in for collection, he did not believe it was relevant once the bill no longer impacts that collection. Rather, the tax comes into the RIT and down into Orphan Share as it normally would. The bill now makes a transfer from Orphan Share into this trust fund.

SEN. LAIBLE asked **Mr. Livers** about his testimony that the bulk of the reclamation is complete. He asked if there is money left from the bond. **Mr. Livers** advised quite a bit of reclamation is under way, but most of the actual dirt work and that reclamation is able to be covered under the reclamation bonds. A considerable amount of dirt work has taken place, but there is still more work to do. There is a shortfall in a couple of areas in Zortman where there is about \$500,000 worth of work to be done. They have only secured \$300,000 for that. The shortfalls in dirt work are not of the magnitude of the water treatment shortfall. Spectrum Engineering was referred to by one of the proponents, and that is the contractor DEQ has on site. He was

impressed with the management Spectrum has done on that site in terms of their fiscal oversight. The Landusky preferred alternative and most of the Zortman preferred alternative are able to be funded. **SEN. LAIBLE** asked if the treatment plants were already completed and the money is just for the continuing operation. **Mr. Livers** said that was correct. Because there is a need for permanent water treatment the plan is to establish this trust so that the corpus of the trust will be sufficient by 2018 to generate interest in perpetuity for the operation and maintenance of those treatment plants. **SEN. LAIBLE** said it appears that some Orphan Share projects in the future might suffer funding shortages as a result of this. He asked if that is a major concern. **Mr. Livers** did not believe it is a major concern. Everything that is currently in the pipeline will be met. It cuts the money for new projects coming in under Orphan Share, but there will still be at least \$2 million a biennium for new projects that might show up. They assume the total Orphan Share liability is somewhere between \$40 million and \$170 million. **SEN. LAIBLE** asked for a copy of the flow chart that shows how the funds are distributed in the RIT. **Ms. Smith** indicated a handout showed the flow chart, but did not show the transfer into the new trust fund.

EXHIBIT (fcs73a09)

SEN. SCHMIDT noted that the long range impacts were different on the two fiscal notes. **Ms. Smith** replied the way money flows into the Orphan Share, on the older amount the long range impact is taking the \$1.2 million out over time. On the previous note the only long range comment made is in regards to a fund for a scholarship. The statute for that scholarship sunsets at the end of FY 2006 so it would no longer be an issue. **SEN. SCHMIDT** expressed hope that **Catherine Halver** intends to write her story.

Closing by Sponsor:

REP. WINDY BOY pointed out that there are long-term health care concerns. The concerns about Swift Gulch are another unanticipated impact. He mentioned that **Billy Bell**, who appeared on the video, has a degree in water quality from MSU Northern and made a statement in previous hearings that the pH balance in this water is equivalent to battery acid. The aquifer that **Councilman King** mentioned is called the Madison Formation which has the purest water in the world. It is said once that goes bad we might as well kiss our lives goodbye. Before Pegasus filed bankruptcy in 1998 they made over \$250 billion in revenue, but have not had the ability to pay for the mess that they left.

Recess 11:01 a.m.

Reconvene 3:25 p.m.

HEARING ON HB 249

Opening Statement by Sponsor:

{Tape: 4; Side: B; Approx. Time Counter: 14.1}

REP. MONICA LINDEEN (D), HD 43, Huntley, opened the hearing on **HB 249**, Economic development trust fund. The bill was the culmination of three years of hard work and collaboration with businesses and economic development groups across Montana. The purpose for the Big Sky Economic Development Trust Fund is to assist small businesses to create good paying jobs for Montana residents, to stimulate economic growth in Montana, and encourage local economic development organizations. They want to retain and expand existing businesses in Montana. The Big Sky Economic Development Trust Fund would be created inside the coal tax trust fund. It would capture the remaining 25 percent of the flow which is currently going into the coal tax trust permanent fund and places it in an internal trust called the Big Sky Economic Development Trust Fund. The trust fund would be jump started with an initial transfer of \$20 million from the permanent fund. The trust will grow for 20 years and then is capped. The interest from that fund would be used for economic development projects with 75 percent going to local job creation projects and another 25 percent allocated for capacity-building projects.

EXHIBIT (fcs73a10)

Proponents:

Evan Barrett, Governor's Office of Economic Development, rose in support of this legislation which is central to their vision of economic development for the future. The principle behind this trust fund is it will grow in value, and therefore the amount of interest coming from it will grow for 20 years. This is about the long-term for economic development. It will be 20 years before it is capped so that future Legislatures and future governors will know that this trust fund was established to provide money in a meaningful way for economic development to create the growth that creates the business stability, tax base, strong economy, and resources for needed services. It is modeled after the Treasure State Endowment that started in 1992 and has been a successful vehicle for building infrastructure for local governments. This is an important part of the package of making economic development work for now and in the future. He pointed out that 75% of the resources allocated under this bill are

allocated to job creation and 25% are allocated to capacity building at the local level. He added this is in the budget, and the Governor respectfully requests that this be given a do concur.

Tony Priete, Director, Department of Commerce, advised this legislation cements the bond between the state of Montana and local governments, particularly rural local governments. Rural areas have to compete for federal funds, state funds, foundation funds, etc. Absent local capacity building they are not playing on a level playing field. This bill will provide the necessary resources to allow rural areas to compete, not only with the cities in Montana, but across the country. The Bearpaw Development District had a local commitment of \$100,000 a year. A study found for every local dollar that was put in, \$38 were returned. Meaningful local development does not just happen. It needs a long-term local commitment along with a commitment from the state. This legislation provides that necessary tool. There is a great need in Montana to fund important programs. The only way to continue to fund health care, education, etc., is by growing the economy. This is one piece of legislation that will provide the necessary tools to grow Montana's economy and expand the tax base, with more people paying fewer taxes, to move the economy forward.

Frank Coty, MSE Technology Applications, Inc., testified their parent company is **Montana Economic Research and Development Institute**. These companies devoted a lot of their time, corporate energy, and effort over the years to help economic development not only in Butte and southwest Montana but all across Montana. Any tool that will help them and others to promote economic development in Montana is a good tool, and they support this bill.

Paul Tuss, Bearpaw Development Corporation, stated he was past president of the Montana Economic Developers Association and was also there on behalf of the county commissions in Hill and Lake Counties to support HB 249. He recommended passage of the bill. He passed out a letter in support of the bill from **Dick King, Montana Economic Developers Association**.

EXHIBIT(fcs73a11)

Joni Stewart, Glacier County, testified this is the most important piece of legislation for rural economic development.

Jim Davison, Anaconda Local Development, and Headwaters Regional Development, advised this is a long-term fix to help people out

of poverty and create jobs for those people. It is a flexible tools for all regions of the state.

Sheldon Bartel, Gateway Economic Development Corporation, testified the bill will allow Montana to compete with our neighbors and give the resources needed to appropriately train personnel in cities and rural areas, for business retention and expansion, marketing, providing loan funds, and creating and retaining jobs in the state of Montana.

Gary Amestoy, Richland County Economic Development Corporation, rose in support of the bill. He reiterated this provides good opportunities for job creation and the associated economic development and tax base increase that goes with it. He thanked **REP. LINDEEN** for all the hard work and hours she put in on this bill.

Charles Brooks, Yellowstone County Commissioners, and Billings Area Chamber of Commerce, advised he was around when TSEP was authorized. There has been a tremendous amount of good from that and this program will do the same.

Jani McCall, Deaconess Billings Clinic, and City of Billings, said they have a strong relationships with the Big Sky Economic Development Association. This is an important bill, and she urged their support.

Opponents' Testimony: None.

{Tape: 5; Side: A}

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. TESTER said there would be money available for local economic developers and money available to local governments. He was curious about the criteria to distribute the money. **REP. LINDEEN** replied the rules provide that funding cannot exceed \$5,000 for each job it is expected to create. It provides for retainment of the grant or loan if the new jobs are not created. A loan or grant may be made only for a new job that has an average weekly wage that meets or exceeds the current average weekly wage of the county. Loans or grants will not be given to businesses or organizations that are not creating jobs that are good paying jobs for that county. **SEN. TESTER** asked how long those jobs have to be in existence. **REP. LINDEEN** advised there will be a review committee that looks at the applications to insure that company is viable. There are no requirements in the

bill to be there for a certain amount of time. The Department and the committee have to be held accountable. **SEN. TESTER** asked **Mr. Barrett** about criteria for job creation. **Mr. Barrett** said the money is allocated through the Department of Commerce. They will have to quickly adopt some rules, and then they will take applications. If there are more applications than resources, those will have to be prioritized. Those priorities will be in terms of the number of jobs, getting more bang for the buck in terms of the cost per job, and the quality of the job. There is a provision in the bill that says the rules adopted by the Department of Commerce must provide for the full or partial repayment of a grant if the new jobs or some of the new jobs for which is the grant is given are not created.

SEN. BALES referred to page 6, lines 11 and 12 that said a project cannot result in the transfer or relocation of jobs from one part of the state to the other. Any time a new business with new jobs is developed, the odds are employees will have to be brought from somewhere. He wondered how that would be applied and what the reason was for that. **REP. LINDEEN** believed the reason was not so much about transferring the jobs but competing against a similar business in another part of the state. **Mr. Barrett** advised the non-competition issue does not deal with the individual. An individual may want to move to Butte for a job. It is so a company does not transfer and take the economic vitality from one part of the state and move it to another. **SEN. BALES** thought there might be job shifting if jobs are above the average of the county. **Mr. Barrett** responded that with or without the law that is an issue. There is a section of the bill that asks for a reasonable distribution of this money so it does not all go to urban centers and has to go into rural areas as well.

SEN. LAIBLE asked about the current balance in the corpus of the coal tax trust fund. **Mr. Barrett** thought it was \$660 million to \$680 million. **SEN. LAIBLE** asked how this interfaces with the Board of Investments and about the oversight of the Big Sky Economic Development Trust Fund. **Mr. Barrett** advised only the interest of the trust fund is used for these purposes. The corpus of the trust is under the guidance and direction of the Board of Investments on how they generate the money that provides the level of interest. The interest is allocated to the Department of Commerce which will set up rules, regulations, and procedures by which applications will be received from the local areas. **SEN. LAIBLE** asked if existing banks will be used or if this is just direct loans to individuals and local communities. **Mr. Barrett** clarified when the Board of Investments is making loans they are loaning out portions of the corpus of the trust and generating interest from those loans which goes either to the

general fund or to other uses like infrastructure and this use. The interest does not have to be protected and there will be more risk taken. The program will provide both grants and loans.

SEN. BOB KEENAN asked about the performance measures. **SEN. COBB** has a bill going through the process that requires agencies to measure the outcomes--performance measures for key program. He thought this would be a key program in the Department of Commerce. He wondered how and when they would know this was working. In order to have any confidence in this, they need to be able to assess it. The bill may need to have a sunset. **Mr. Barrett** advised the sunset language is probably not suited to the purpose which is essentially a long-term economic development effort and the need for this fund to continue to grow over the years until it reaches a significant level. By jump starting it has some level of significance to begin with. There will be about \$3 million allocated out in this first biennium. The performance measurement is in the statute in the form of a report that comes back to the Legislature for the next session on the 75 percent. The 25 percent for capacity building is less quantifiable in an accurate manner. It will be recorded in the same manner as the Treasure State Endowment. This will be measured in terms of the jobs and the quality of the jobs created. **SEN. KEENAN** asked **SEN. COBB** if he was comfortable with the performance measures and expressed skepticism. He wanted to see the results of economic development other than the fact that it pays the economic developers a pretty good salary. **SEN. COBB** advised he would think about that.

SEN. COBB said money given to local governments would be based on how many jobs were created. This bill is not asking the regional development corporations to create jobs; this is more for structural development. **SEN. LINDEEN** said the 25 percent is for capacity for those economic development organizations. **SEN. COBB** said the other 75% has to be an actual job creation grant and they have to pay it back. That would be a performance measure in a sense. The 25 percent is harder to measure. **REP. LINDEEN** said that is correct. The Department will report back every legislative session.

SEN. SCHMIDT referred to page 8, line 2 regarding a certified regional development corporation. **REP. LINDEEN** advised last session they passed a bill to create certified regional development corporations. HB 76 created 12 certified regional development corporations. There were one or two communities in the state that were not part of one of those, and this amendment assures that those two communities are not left out of being able to apply for these dollars. **SEN. SCHMIDT** asked what the development corporations are certified in. **Mr. Barrett** advised

the Economic Development Advisory Council in the Department of Commerce uses takes applications. They set up criteria for required capacity so an organization could deliver the services for its area and help the local development organizations in the area deliver services. Those officially certified have a seven-year contract with the Department of Commerce. They are under constant review for their performance and involvement on a regional basis under that certification.

SEN. KEENAN asked about the impact on the cultural trust. **REP. LINDEEN** explained within the trust are several trusts such as TSEP, the regional water fund, and the permanent fund which is the corpus. Currently the 25 percent of the 50 percent is flowing into the permanent fund. They are capturing that and putting it into the Big Sky Economic Development Trust Fund. It does not affect the cultural trust because that is part of the other 50 percent that is outside of the trust fund. There is a loss of interest to the general fund, and that is accounted for in HB 2. **SEN. KEENAN** advised this is like the bonding bills--the first year there is no cost, the second year it is \$400,000, and then it is \$3 million to \$5 million for the next twenty years. He asked what will happen in FY 2009 and FY 2010 and from thereon out. **REP. LINDEEN** responded that as the trust itself grows the estimated earnings would be available for projects and that would be the amount that would not be going into the general fund. She contended they are displacing it from the general fund in order have it invested in another way that is long-term. They expect to see a better return on investment by putting it into economic development projects. **SEN. KEENAN** remarked that in 2026, the projected hit on the general fund is \$6.6 million.

SEN. SCHMIDT asked about the interplay with the communities that have their own economic development person or program. **Mr. Barrett** indicated this is just one more tool and provides some new capacity. For some of the things that can be done under this bill, there are no resources to do it. It is difficult to do a feasibility study, and that is allowable under this bill. Moving expenses can be covered under this bill as long as jobs will be produced. **SEN. SCHMIDT** said it will supplement those programs already in existence and enable those that do not to have a resource. **Mr. Barrett** replied, yes.

Closing by Sponsor:

REP. LINDEEN advised that **Joe McClure, Big Sky Economic Development Authority, Billings**, sent his support. Also in support were **Harrison Fagg**, former legislator and owner of HFGA Architects, and other prominent members of the Billings community. Businesses across the state, the state Chamber, and

local economic development groups understand there is an important reason for Montana to have this kind of long-term access to economic development dollars. She hoped this would be as successful as the Treasure State Endowment Program.

HEARING ON HB 35

{Tape: 5; Side: A; Approx. Time Counter: 30}

Opening Statement by Sponsor:

REP. LARRY JENT (D), HD 64, Bozeman, opened the hearing on **HB 35**, Highway patrol officer salaries and retention. **REP. JENT** stated this bill came out of the State Administration and Veterans Affairs Interim Committee. It began with a letter from the Chairs of the Senate and the House State Administration Committee to the Attorney General before the end of the session in 2003 pointing out some problems identified with the Highway Patrol. The bill creates a law enforcement salary index by adding together the salaries of sheriff's deputies and uses that index to increase pay for Highway Patrol officers. The Legislative Audit Division salary survey conducted in 2004 found that entry level patrol officers are paid \$9,260 less per year than the average entry level officer in the eight county sheriff's departments where the patrol's headquarters and district offices are located. Over the past eleven years 78 percent of the officers who left the patrol for non-retirement reasons did so for higher salaries.

{Tape: 5; Side: B}

To improve salaries and put additional officers on the road, vehicles would be assessed a \$5 fee upon registration. The money from the fee goes into a fund; the funds would not be expended immediately but would be held to provide the base necessary to establish a solid foundation for the fund. In FY 2007 a pay increase kicks in and 20 new officers would be recruited and hired. Another aspect of the bill was to eliminate vacancy savings for the patrol. This would put 14 officers on the road, and the funding from the vacancy savings portion of the bill comes from the gas tax.

Proponents' Testimony:

Mike McGrath, Attorney General, emphasized Montana continually ranked 50th among the states in highway traffic safety related issues. The reasons include lack of enforcement on the road. Montana had more officers thirty years ago than today. This bill

is designed to have more presence on the road. This bill was the product of an interim committee. There was a lot of work done in providing the funding device. He said it was not an exaggeration to say they have operated the Patrol in a crisis mode for a long time. This bill will address that crisis.

Paul Grimstad, Colonel, Montana Highway Patrol, spoke in support of HB 35. The Montana Highway Patrol has been experiencing problems in recruitment and retention over the past several years. Currently they are down 23 statewide; three of them are serving in the military in Iraq. He thanked **REP. JENT** for supporting this bill and everybody else that was involved.

EXHIBIT(fcs73a12)

Tom Schneider, Montana Public Employees Association, testified he also represents 160 Highway Patrol officers. This is a necessary bill, and he asked for the support of the committee.

Tom Butler, Montana Highway Patrol, advised he was taking personal leave to appear and testify before the committee. In addition to being a sergeant with the Patrol, he also serves as Vice-President of the Association of the Montana Highway Patrol which includes approximately 200 active and 150 retired Patrol officers who all support the bill. He distributed brochures to the committee.

EXHIBIT(fcs73a13)

Jim Campbell, Montana Association of Chiefs of Police, and Montana Police Protective Association, advised the Highway Patrol has been a good source for professionally-trained officers for police departments because of salary discrepancies. They will lose that, but want to see Highway Patrol officers paid properly.

Brad Moore, Montana Highway Patrol, testified in support of HB 35. This will enable patrolmen like him to stay with the Patrol. He said he was proud to be part of the Patrol, but it is getting tougher for his wife and two children to weather the storm. He asked the committee to support the bill.

SEN. JOE TROPILA, SD 13, Great Falls, advised he was Chairman of the State Administration Committee over the interim, and this was a product of that committee. It costs \$40,000 to \$50,000 per year to train a highway patrolman at the Law Enforcement Academy. Upon graduation the cities and the counties are always raiding the graduates because they can pay the graduates more money. The state is training them, and the cities and counties are stealing them.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. LAIBLE asked about averaging the salaries and how that will take place. **REP. JENT** replied before each January in the odd numbered years the Department of Administration will conduct a salary survey. They will use Butte-Silverbow, Cascade, Yellowstone, Missoula, Lewis and Clark, Gallatin, Flathead, and Dawson Counties. It is in subsection 10(a) at the bottom of page 4 and the top of page 5. They will come up with an index by averaging the salaries. This is subject to any collective bargaining agreement that the employees come up with.

SEN. BARKUS referred to the comment of **SEN. TROPILA** and wondered what kind of responsibility the counties have to the Montana Highway Patrol as they do patrol a lot of county roads and not just state highways. **Mr. McGrath** observed it is an interesting relationship and varies from community to community. In the more rural areas there is very little law enforcement at all. A sheriff's deputy on patrol at night will often back up a highway patrol officer who makes a stop and vice versa. In the bigger communities their roles tend to differ, but they still work quite closely together. In terms of the training issue, he stated there is a high turnover rate. People who are dedicated to a career in law enforcement can make a lot more money in the city of Kalispell. The last six officers hired there were highway patrol. It is a substantial issue in terms of retention. It is not just the academy and the basic training, but there is a continuing training program. For the city of Kalispell it is a good deal because they can hire people that are well-trained.

SEN. BARKUS wondered if the county should have a responsibility to assist the state of Montana in funding these officers. **Mr. McGrath** replied the problem is cyclical. Years ago, it used to be the other way around.

SEN. LAIBLE said no one questions the fact that the Highway Patrol needs the funding. He wondered why they decided to do this instead of taking it out of the gas tax. **REP. JENT** indicated how to fund this bill was the principle discussion and dispute over the bill. The bill passed 16-0 in the committee, and 91-9 in the House. It went to House Appropriations, and there was a one-vote margin to switch it to general fund. That amendment was taken back out on the floor. The interim committee looked at all possible alternatives for funding. They wanted this to be a statutory appropriation instead of general fund because the financial condition of the state varies from session

to session. The trouble with funding this out of the gas tax was the gas tax is used as matching funds for construction, and there was substantial opposition. They looked at insurance policies but some people have an insurance policy with twenty vehicles on it, and some people have a policy with one vehicle. The best thing they came up with was per vehicle. This was a two-year process.

SEN. ESP referred to page 18 of the bill which was about reporting to the audit committee and what the report would include. He asked **Mr. Grimstad** if that was amended to include the number of hours spent in clerical duties, etc. **Mr. Grimstad** said he would have to confer with **REP. JENT** and others. They were concerned about that, but with some of the computer technology they were hoping that a lot of the clerical work that has been generated is reduced. That is a work in process. They will see if they obtain some additional officers if in fact they need additional clerical work because of those officers. **SEN. ESP** inquired if they could hire clerical people cheaper than they could do it with Highway Patrol officers. **Mr. Grimstad** replied, yes.

Closing by Sponsor:

REP. JENT emphasized the audit function paragraph was put into this bill and was unanimously approved by the committee. This was an amendment to the bill as it was drafted by two members of the Legislative Audit Committee, particularly **REP. DEE BROWN**. He indicated he supported the amendment. **REP. BROWN** also used an older legislative audit that talked about how time was not being spent on patrol. They wanted to get the commitment that the things they funded were done by putting in an audit function. That is on page 18 of the bill. They would like to keep that in the bill, and they think that is an important check and balance. It is a promise they made to other members of the House that they would keep tabs on things. He urged the committee to pass the bill.

SEN. TROPILA will carry the bill on the floor.

HEARING ON HB 476

Opening Statement by Sponsor:

REP. DAVE MCALPIN (D), HD 94, Missoula, opened the hearing on **HB 476**, Increase marriage licence fees for funding domestic & sexual violence victims' services. **REP. MCALPIN** stressed the bill addresses a clear problem which is that most partner and family

members cases are charged as misdemeanors. Unfortunately, in most communities in Montana, there are no officers in place to follow up on those sentences, collect the fines, make sure those offenders are complying with the sense of the court. There is a direct solution to that problem in the bill which is to provide these officers through this fee. Those officers would be funded by a grant with a two-year sunset and would follow up with these offenders, collect the fines, and be sure that the offenders were complying with the sentence relative to their offense. There is a great model for success in Lewis and Clark County where they were able to secure a federal grant of this type. The program was self-supporting in two years. The money was successfully recycled into the Kalispell area. The grant will require self support after two years.

Proponents' Testimony:

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, read from written testimony.

EXHIBIT(fcs73a14)

She submitted testimony for **Susan Schwartz, Violence Free Crisis Line**, and informational testimony from the Board of Crime Control.

EXHIBIT(fcs73a15)

EXHIBIT(fcs73a16)

Pam Bucy, Assistant Attorney General, Department of Justice, testified she was also there in her role as the Co-Chair of the Equal Justice Task Force, which is a Supreme Court created task force to provide low and moderate income individuals access to the court system. Before coming to the Attorney General's office she served as a prosecutor in Lewis and Clark County along with **Attorney General Mike McGrath** when he was the County Attorney in Lewis and Clark County. They were involved in establishing the compliance officer program that is operating in Lewis and Clark County and has been incredibly successful, especially at the misdemeanor level. The standard sentence of a partner or family member assault requires a minimal amount of jail time, a fine, and that the defendant go to a prevention program. The problem with misdemeanor sentences is they last one year. If no one is paying particular attention the standard domestic violence program can take up to six months.

{Tape: 6; Side: A}

Ms. Bucy noted they see these offenders again, especially if this counseling is not completed. This bill provides a program that has demonstrated its worth. Besides making sure these people get the intervention they need to protect their families, it also has somebody monitoring that they are paying their fines. The program in Lewis and Clark County was self-sufficient in two years, and she anticipated seeing that in any county. This is a good program and an appropriate funding source.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. HANSEN asked about page 4, line 12 and the reason for amending the fee from \$20 to \$13. **REP. MCALPIN** advised the House Judiciary Committee decided it would be better with a smaller amount. That reduces the number of grants offered from three to four and a half to two. **SEN. HANSEN** asked about page 7, line 13, and the distribution of the fee. **REP. MCALPIN** said that was the coordinating language, because the Clerks of Court had a similar bill. The clerk's fee is \$10 and this fee is \$13, for a total marriage license fee of \$50.

SEN. LAIBLE asked **Ms. Cholewa** if there are any projections on how this would be funded in the future if this is successful and what it would take to fund a statewide program. **Ms. Cholewa** advised they have already taken a step beyond the pilot in Lewis and Clark County and proven they can become self-sufficient in two years. The second grant at the end of that federal funding stream went to the Kalispell program, and the Kalispell program is meeting their objective to become self-sufficient. If they raise the money for two grants, and they become self-sufficient, that money becomes available again for two more grants. The infrastructure can slowly be built for accountability on misdemeanor offenses. **SEN. LAIBLE** asked if the fines would pay for the continuation of the projects and then they could go on to other communities. **Ms. Cholewa** indicated that is exactly the model they are looking at.

SEN. WILLIAMS recalled **REP. WINDY BOY'S** bill that would have created felony offenses for Partner family member assault and asked if that bill had amendments put on it. **Ms. Cholewa** replied the House Judiciary Committee was shocked to find out there are more consequences for animal cruelty than for partner family member assault. They wanted to do something, but felt the state could not afford felonies. They created higher penalties for the misdemeanors, which meant more jail time for the misdemeanor

crimes. That created a cost shift to the local level. Fine collection would increase, but there would be nobody to collect the fines.

Closing by Sponsor:

REP. MCALPIN stated this is a priority worthy of consideration.

SEN. LYNDIA MOSS would carry the bill on the Senate floor.

HEARING ON HB 796

{Tape: 6; Side: A; Approx. Time Counter: 6.5}

Opening Statement by Sponsor:

REP. TIM CALLAHAN (D), HD 21, Great Falls, opened the hearing on **HB 796**, Study the correctional system. **REP. CALLAHAN** advised the bill came at the request of the Joint Appropriations Subcommittee on Corrections and Public Safety. Since this was requested and since the hearing in the House he had numerous discussions with the Governor's office, the Department of Corrections, and the other departments involved. He asked that the bill be tabled. The committee still has concerns about the direction of Corrections, but given the fact there is a new Governor and the Governor and his staff did not have much time to look at the issues in the Department of Correction it might be premature to do this study. They might be better served to give them the interim to take a look at those issues. If there is a specific study that needs to be done, it might make more sense to bring a bill requesting an appropriation with specific thoughts in mind. He thought the issues were relevant and will need to be looked at, but thought they might be better served doing that two years from now rather than right now. The other part was that this bill was funded by stealing \$50,000 from another branch of government and three agencies. It would be his preference to fund it up front with general fund.

Proponents' Testimony:

Bill Slaughter, Department of Corrections, said the Corrections and Public Safety Interim Committee brought up a lot of good issues. There is nothing in the bill that is not absolutely necessary to look at and important to study.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. STEVE GALLUS said they worked hard on the bill in subcommittee. He agreed the proper venue for this would be the Corrections Advisory Council. Having another interim committee would have split up the work and might have confused things.

CHAIRMAN COONEY asked if the committee that was already in place would look into some of these things. **Mr. Slaughter** indicated the Advisory Council that was reactivated under the Martz administration is an active and busy council. Most of the new direction taken within the Department of Correction came from that advisory council. The Department asked Governor Schweitzer to reappoint that group and thought it was important that the Governor have the opportunity to put folks on that advisory council. He hoped **SEN. GALLUS** and **CHAIRMAN COONEY** would return. He emphasized the importance of the work done by the subcommittee. The issues discussed in subcommittee were added to the list to bring forward to the advisory council.

Informational Testimony:

Dr. Bob Wynia, Department of Public Health and Human Services (DPHHS), testified they would have had difficulty getting the \$50,000 but felt sympathetic to the plan the committee was going to do during the interim. He said they would work to find solutions to the problem.

Anna Whiting-Sorrell, Governor's Family Policy Advisor, said she acts as the liaison between DPHHS, the Department of Labor and Industry, and the Department of Corrections. As she looked at this bill she realized this is something they are committed to do, and she pledged they would go forward. She thanked the joint committee for bringing this forward and making sure this is on the radar screen of the Governor's office.

Questions from the Committee and Responses:

SEN. SCHMIDT indicated she sat on the subcommittee that wrote the bill. They were serious about all the points in the bill, and she was hopeful that the advisory council will pick this up and run with it.

SEN. BARKUS asked what happened from the time this went through the House until now. **REP. CALLAHAN** replied he was not comfortable with the funding mechanism. Meanwhile, certain conversations took place. He was more comfortable with what would happen during the interim than he was when they were going through the committee process.

Closing by Sponsor:

Closing by Sponsor:

REP. CALLAHAN closed on the bill.

EXECUTIVE ACTION ON HB 796

{Tape: 6; Side: A; Approx. Time Counter: 18.1}

Motion: SEN. GALLUS moved that HB 796 BE CONCURRED IN.

Substitute Motion/Vote: SEN. GALLUS made a substitute motion that HB 796 BE TABLED. Substitute motion carried 12-0.

HEARING ON HB 277

{Tape: 6; Side: A; Approx. Time Counter: 20.7}

Opening Statement by Sponsor:

REP. RICK MAEDJE (R), HD 2, **Fortine**, opened the hearing on **HB 277**, Fund water loss mitigation for bull trout recovery in Glen Lake irrigation dist. The U.S. Fish and Wildlife Department, Fish Wildlife, and Parks (FWP), and other organizations have been trying to fix this ditch so that water normally taken for irrigation could be put into bull trout recovery. There was almost \$1 million put in to this, and nobody has fixed the problem. This has been studied and everyone agrees there is a half-mile stretch of this ditch where the irrigators only need 50 percent of the water. They own water rights to the entire stream. This bill funds that half-mile section. **REP. PAUL CLARK** helped him find \$4 million in the state special revenue account for state parks that would revert if it was not used. They wanted to capture about \$45,000 of that to get as much of that ditch lined as possible. There are some other grants available. **John Wilson, Trout Unlimited**, said he would work with them to try to line the rest of the ditch. The bill is about getting this started.

Proponents' Testimony: None.

Opponents' Testimony:

Doug Monger, FWP, read from written testimony.

EXHIBIT(fcs73a17)

John Wilson, Montana Trout Unlimited, did not think this was a bad idea overall, but the Parks Division has nothing to do with irrigation ditches and bull trout. The Future Fisheries Improvement Program has been successfully used to do several ditch lining projects with irrigation districts across the state. They think the Future Fisheries Improvement Program is the best way and the right way to actually fund this project. This bill is flawed in that, though it may produce some water savings by lining the ditch, there is no requirement for that water to go for flow use for bull trout. Conversely, if it went through the Future Fisheries Program they would have to do an application, show the amount of water that would be saved, and get involved in a lease for that water that would be for the duration of the ditch lining improvement.

{Tape: 6; Side: B}

He told **REP. MAEDJE** that Trout Unlimited would cooperate with the Glen Lakes Irrigation District through the Fisheries Improvement Program to try to make this thing happen. He urged the committee not to raid the parks funds to do this irrigation and fish project. He urged them to encourage the Glen Lake Irrigation District to use the Future Fisheries Improvement Program just like everybody else does.

Robert Throssel, Montana Wildlife Federation, rose in opposition to this bill. This would set a bad precedent for funding what would otherwise be a good project. There are mechanisms in place that are the proper funding for it. Federation members appreciate the work of state parks and fishing access sites, and money that is available to fund the state parks and fishing access sites should stay in that fund.

Mr. Wilson presented written testimony in opposition to the bill from the Montana Chapter of the American Fisheries Society.

EXHIBIT(fcs73a18)

Informational Testimony:

SEN. TESTER asked **REP. MAEDJE** why nobody from the irrigation district was there supporting him in this endeavor. **REP. MAEDJE** indicated the irrigators could care less if the ditch is fixed or not. They have all the water they need; it is more than enough. **SEN. TESTER** asked if this ditch is privately owned, or if it was built with federal dollars. **REP. MAEDJE** replied it was built 105 years ago, and he did not know if it was part of a federal project. **SEN. TESTER** referred that question to **John Tubbs, Department of Natural Resources (DNRC)**. **Mr. Tubbs** advised the

Glen Lake Irrigation District is a governmental entity. He did not believe this is a federal irrigation project; rather, it was formed under the state statute. This would qualify for a grant in HB 6. **SEN. TESTER** asked if the ditch company made application for state grants, and **REP. MAEDJE** indicated FWP asked them to put in new pipes and equipment to allow more water to flow down to Grave Creek. He did not know if there was federal money in it and was not aware the grants. **SEN. TESTER** said there are \$100,000 grants available for water. He assumed the reasons they did not apply is because they did not care. **REP. MAEDJE** replied they have no incentive to do this as they have all the water they need. US Fish and Wildlife asked for more water. The ditch company told them to take care of it, and they did everything but fix the ditch. **SEN. TESTER** asked if the ditch company does not want it then who wants it besides **REP. MAEDJE**. **REP. MAEDJE** stated people want to fish for bull trout. **SEN. TESTER** asked **Mr. Wilson** why they oppose the bill. **Mr. Wilson** said they looked at the project and think it potentially could happen and that it could benefit bull trout, but the bill does not get the job done.

SEN. LAIBLE inquired why they spent a million dollars and it has not solved the problem. **Mr. Tubbs** did not know the total dollar amount. His Department funded \$100,000 for the Therriault Creek projects and US Fish and Wildlife co-funded that. US Fish and Wildlife Service spent a significant amount of money on a diversion structure that passes fish. It is a water rich area relative to eastern Montana. The Glen Lake Irrigation District has eked out a living for a hundred years, and they are trying to weigh this bull trout issue against irrigation needs.

SEN. BARKUS asked **REP. MAEDJE** to help him justify the suggestion they use state park funds for an irrigation water project. **REP. MAEDJE** said originally it was \$100,000 general fund. That did not pass muster in the House, so he started looking elsewhere. **REP. CLARK** suggested going to the parks account because there was an excess of money in it. That is how he was able to get the bill out of the House.

SEN. ESP asked about the dollars in the account reverting at fiscal year end. **Mr. Monger** advised there is no reversion in the parks accounts. The funding in the account stays in that account. Part of the money in that account is being used to fund the current fiscal year operation, and part is being used in anticipation of HB 2 and HB 5 passage for the next biennium.

Closing by Sponsor:

REP. MAEDJE pointed out line 24 and 25 in the bill was about accountability. This irrigation ditch has miles of studies on it

that say fixing the ditch in this one-half mile section will result in a 50 percent gain in water. He described the leak as unbelievable. There will be a report to FWP about the success of the project including the percentage of water loss that is mitigated. The governing entities trying to solve the problem keep hitting the wrong mark; the ditch needs to be lined. The irrigators will not enter into a lease or give away their water rights. This is a unique problem in that the irrigators do not care they are losing water, but the public and the state of Montana are concerned about the bull trout. He was open to another way to fund the bill.

CHAIRMAN COONEY said they would not take action on the bill, and giving **REP. MAEDJE** a chance to provide additional information. **SEN. CURTISS** will carry the bill on the floor.

EXECUTIVE ACTION ON HB 379

{Tape: 6; Side: B; Approx. Time Counter: 14.2}

Motion: **SEN. LIND** moved that HB 379 BE ADOPTED.

Discussion:

SEN. LIND declared he was moved to tears by the testimony. This is a problem that the state shares credit for creating, and the state needs to step up and work toward at least a partial solution to the problem.

SEN. HANSEN echoed the comments of **SEN. LIND**. This is a bill close to his heart. They saw and heard testimony about the devastation from individuals who live in that community. The state had a part in that devastation and needs to step to the plate.

SEN. ESP asked if this funding is ongoing until the trust fund is sufficient. **Ms. Purdy** advised the money would go into the account until 2018 at which point the amount in it is estimated to be sufficient to generate enough interest to maintain the treatment facilities.

SEN. TESTER pointed out to **SEN. ESP** that the fiscal note states there will be a fund balance of \$19.3 million on January 1, 2018.

Vote: Motion carried 14-0 by voice vote.

Either **SEN. HANSEN** or **SEN. TESTER** will carry the bill on the floor.

EXECUTIVE ACTION ON HB 35

{Tape: 6; Side: B; Approx. Time Counter: 18.1}

Motion: SEN. BARKUS moved that HB 35 BE CONCURRED IN.

Discussion:

SEN. BARKUS stated that Highway Patrol officers are underpaid compared to their colleagues in local law enforcement. They spend time away from their families and work late nights.

SEN. TESTER thanked the committee for the positive vote on HB 379. He asked about the gas tax money in HB 35 and if that is new money or if that is appropriated every year. **CHAIRMAN COONEY** thought there were other funds that went into this including the gas tax, and that is not changing. **SEN. TESTER** indicated page 2 of the fiscal note says the Highway Patrol is budgeted in HB 2 in the state special revenue fund gas tax. **Ms. Purdy** responded the Highway Patrol is funded with gas tax. That would be the state special revenue account that is currently funding it. Consequently, it would have some impact on the balance in that account. The subcommittee put most of that money in HB 2 with over \$400,000 in the first year. **SEN. TESTER** said they do not want the contractors opposing this. He thought it was a good bill.

SEN. HANSEN wondered if the \$5 charge on the vehicle will be opposed by the Governor as a tax. **CHAIRMAN COONEY** advised, no. That was confirmed by **Amy Sassano, Office of Budget and Program Planning (OBPP)**.

SEN. ESP commented he would support the bill. He thought the Highway Patrol needs to focus on how to do paper work with clerical people and patrolling with patrol officers, do everything they can to move in that direction to become more efficient, and to think creatively about ways to do that.

CHAIRMAN COONEY indicated that was something they discussed when they heard the audit. He said he would not be on the audit committee because he would serve on another committee. He hoped the audit committee will bird dog that as it was a major point of discussion during the audit. It may not be specifically written into this legislation, but it is a part of that audit, and he hope they would pursue that because it is an important point.

Vote: Motion carried 16-0 by voice vote.

EXECUTIVE ACTION ON HB 6

{Tape: 6; Side: B; Approx. Time Counter: 24.4}

Motion: SEN. LIND moved that HB 6 BE CONCURRED IN.

Discussion:

Motion: SEN. LIND moved that HB000601.ACE BE ADOPTED.

EXHIBIT(fcs73a19)

SEN. LIND said the amendment would provide \$100,000 to fund the Missoula County Grant Creek Restoration and Flood Mitigation, which was below the line. He requested that **Mr. Tubbs** be allowed to speak on this. **CHAIRMAN COONEY** allowed for some brief discussion.

Mr. Tubbs advised the amendment reduces \$100,000 from project planning grants that would go to about ten projects for irrigation infrastructure or other community projects. They would probably push another \$100,000 worth of requests over to the TSEP program if it was a drinking water or waste water project. It does not effect anybody in any bill. It is a future use of funds for a project planning grant that they have yet to receive an application for. It reduces resources in that area from \$300,000 to \$200,000. It does what **SEN. LIND** wants to accomplish. When the Department originally reviewed that grant, the need for match to the FEMA dollars was unclear. It looked like they had a good project, but maybe it could be done next session. Since that time, FEMA came forward with a substantial amount of money to match and are looking for Missoula to come up with their local match. The numbers are \$100,000 Renewable Resource Grant, \$400,000 from Missoula County, and the FEMA money is \$2.9 million. The Department of Transportation is bringing in \$70,000, and the homeowners association was bringing in \$400,000 for a \$3.9 million project.

SEN. TESTER asked **Mr. Tubbs** how many projects do not occur and whether the money automatically flows down to fund projects below the funding lines if somebody does not do a project. **Mr. Tubbs** replied the money does automatically flow down if the project is cancelled within the biennium. They generally see one or two projects not able to move forward that are willing to release their funds. **SEN. TESTER** commented that the amendment deals with funding lines. Somebody always gets left out. The next project is Liberty County.

{Tape: 7; Side: A}

Typically, somebody gives up their grant and that money flows down. In this case, Missoula County is in line to get that money.

SEN. LAIBLE inquired if there is a committee that reviews all these grant applications and determines which ones get approved based on preset criteria. **Mr. Tubbs** explained the process starts May 15th when they receive the applications. They take the summer to make recommendations to the Director for making recommendations for the Governor for making recommendations to the Legislature. The Committee is Long Range Planning.

SEN. LIND stated this is a good project. It has been up and running and brings in significant federal money. He encouraged positive consideration of the amendment.

Vote: Motion failed 8-11 by roll call vote with **SEN. BRUEGGEMAN, SEN. COONEY, SEN. GALLUS, SEN. HANSEN, SEN. HAWKS, SEN. LIND, and SEN. WILLIAMS** voting aye. **SEN. WEINBERG** voted aye by proxy.

Motion: **SEN. COBB** moved that HB000602.AGP BE ADOPTED.

EXHIBIT(fcs73a20)

Discussion:

SEN. COBB said the intent of the amendment is there is \$1.2 million worth of projects. If these are funded through a bonding program, everything on the list can be done. Interest rates are low, and this is economic development. This has not been done this way before, but this is a way to get these projects up and running. **SEN. COBB** asked if **Mr. Tubbs** could identify the amount of federal funds. **Mr. Tubbs** advised the projects identified in the amendment add up to \$7.7 million in federal money.

SEN. BRUEGGEMAN said this is one of a series of amendments for this bill, HB 11, and HB 758. This is something that he and **SEN. COBB** worked on for ways to fund the whole list in TSEP. It is his belief that this is real economic development--putting dollars on the ground to help with infrastructure. They looked for a way to do this without hitting the spending cap in a relatively cost effective manner. They thought they could add about \$4 million into HB 748 in the bonding for a federal match on water projects. This would enable projects to potentially go forward at the discretion of DNRC on regional water and TSEP. This amends HB 6, HB 11, and HB 748. HB 748 is a two-thirds majority vote. They would all have to go back to the House for Senate amendments. That presents a question because of what has

been happening when things go to the House. These projects are all valid.

SEN. LANE LARSON asked about the Bear Creek drinking water project. It was below the funding line and was not on the amendment. **SEN. BRUEGGEMAN** advised some of these projects did not have federal funding. **SEN. COBB** added none of these projects would be wiped out. They are just trying to bond these certain projects. If they are not bonded, they are still where they are supposed to be.

SEN. HAWKS asked and was granted permission to ask **Mr. Tubbs** if this is another one of the lists where the dividing line has something to do with preparedness to move ahead. He wondered if these projects were ready to go or if they would be ready to go within the time period. **Mr. Tubbs** advised these are the lowest ranking projects. They may have been the type of project that are strictly infrastructure and those do not get as many points. Preparedness is the other issue. All of the projects represent a true community need. By and large they are all ready to go, but he was sure one or two will not go. Getting a whole project off the ground that costs several million dollars is not an easy thing. If this were to happen, they would most likely try to get a letter of credit at the Board of Investments intercap program. Only when an expense is incurred would they draw that money down. It would be done under a bond anticipation note, so at the end they would collect all of those draws and sell one bond for whatever was actually used as opposed to selling a bond in anticipation it would be used.

SEN. TESTER said his concern was not about the intent of **SEN. COBB** and **SEN. BRUEGGEMAN** but the potential intent of others who might see this bonding as an ability to pop up other projects. There is the potential for a feeding frenzy. He talked to **REP. JOHN WITT**, who is carrying this bill, who expressed that concern in the House. **SEN. TESTER** agreed infrastructure is critically important for economic development, but said he had to resist the amendment.

CHAIRMAN COONEY agreed. He and **SEN. BRUEGGEMAN** talked about how to get this done. He thought what **SEN. COBB** and **SEN. BRUEGGEMAN** were trying to do was noble and worthwhile. He was concerned about the mechanics of the process and what may or may not happen to all of these vital pieces of legislation.

SEN. COBB said even if the House says no to the amendments, the Senate could strip the amendments off and pass the bill. New projects are not being added; these are projects that are viable

now. This would allow these projects to get up and running and get several million of federal funds now.

Vote: Motion failed 9-10 by roll call vote with SEN. BALES, SEN. BARKUS, SEN. BRUEGGEMAN, SEN. COBB, SEN. ESP, SEN. KEENAN, SEN. LAIBLE, and SEN. RYAN voting aye. SEN. STAPLETON voted aye by proxy.

Vote: Motion that HB 6 be concurred in carried 17-0 by voice vote.

SEN. BRUEGGEMAN would carry the bill on the floor of the Senate.

EXECUTIVE ACTION ON HB 11

{Tape: 7; Side: A; Approx. Time Counter: 20.1}

Motion: SEN. TESTER moved that HB 11 BE CONCURRED IN.

Discussion:

SEN. TESTER advised the bill came through the Long Range Planning Subcommittee. It was carried by REP. WALTER MCNUTT and there are more projects funded since the bill was in Long Range Planning. They are all good projects.

SEN. HAWKS asked about the rationale about the four projects that have gone over the recommended allowance. He asked if there is a cap arrangement, and if it is time for a change. SEN. TESTER advised Mr. Edgcomb will probably come back with some recommendations to increase the cap from \$500,000 to \$650,000 or \$750,000. Regarding the top four projects, it was determined by a majority of the committee that these top four projects were in great need of support through TSEP.

SEN. BRUEGGEMAN advised they made the motion to move the dollars up into those projects. Eventually the decision will have to be made to raise the level of the cap to \$750,000. That bar has not been changed in a long time. These were all critical need projects that, with additional funds, can do additional work.

Motion: SEN. COBB moved that HB0001103.AGP BE ADOPTED.

EXHIBIT(fcs73a21)

Discussion:

SEN. COBB said this is the same concept as the previous amendment. About \$2.2 million would be bonded in order to get these projects going. He asked to have **Mr. Edgcomb** reveal how much federal money would be brought in for these projects, and **Mr. Edgcomb** indicated it was approximately \$4.3 million in federal funds. If this is bonded, it is one percent or less of all the state bonding.

SEN. ESP said he chatted with leadership in the House about amendments. He did not think they should make public policy decisions based on a fear of something falling apart in the House. He requested permission to ask a question of **Mark Bruno, OBPP**. He inquired if the budget office has looked at this proposal and if they had a position on it. **Mr. Bruno** advised as far as increasing HB 748, the budget office does not favor doing this. There will be a long-term cost on the general fund. They do not support **SEN. COBB'S** amendment.

SEN. BARKUS asked **SEN. BRUEGGEMAN** if some of the projects are important, but not all of them. **SEN. BRUEGGEMAN** thought they were all important projects. Some of them are ranked because they are in a better state of preparedness or had a greater pressing need. All these projects represent important needs in communities and things that have to be done. St. Ignatius has EPA violations because their sewer system is in a state of failure. Public health emergencies rank higher. Some projects face a danger of losing federal dollars. All the projects on the list need to be funded. He thought it was unfortunate that they have to consider whether there is a danger in sending something back over to the House with amendments. There is a lot of good that can be done here. He thought it would be foolhardy to endanger these bills.

SEN. KEENAN said they heard HB 249 earlier, which uses coal trust fund interest. He was surprised the Governor's office was concerned about the impact on the general fund by bonding. This is measurable. These are projects that are ready to start digging dirt, buying pipe, putting people to work, etc., as opposed to HB 249, which was discussed in terms of performance measures. That is the option of the Executive Branch, but it did not make sense to him to fund for economic development on a wing and a prayer for big dollars and not get the shovels in the ground on local projects where there is a need.

SEN. TESTER asked **Mr. Edgcomb** how many projects were funded in this program last session, and **Mr. Edgcomb** replied 40. **SEN. TESTER** inquired whether they fund 40 every year. **Mr. Edgcomb** advised last session they had 55 applications, which was a record high. There were 47 this time. In the past the funding line has

typically been 40. **Mr. Edgcomb** indicated the funding line has grown over time. The number of applications received was 40.

SEN. TESTER stressed they could do what they want with the amendment regardless of the House. He thought this has worked very well in the past and was well thought out. The endowment program was adopted in the early 1990s, and he applauded the legislators that did that and the vision they had to push a piece of legislation through for the Treasure State Endowment Program.

{Tape: 7; Side: B}

If these projects were bonded, the projects could probably get done quicker and employ more people quicker. The University at Northern wants some equipment in one of their buildings that they needed to bond for two years ago. The University of Montana needed equipment for the Journalism School and the Law School. These are all worthwhile projects and very much economic development projects. They are picking up where previous sessions have not been able to fund things. Last session they basically did not have a bonding program at all. They could have, but chose not to. This would be the first time ever they would bond for all their GL or TSEP programs. That did not mean it was the wrong thing to do, but they would be opening a pandora's box.

SEN. COBB understood and appreciated what **SEN. TESTER** was saying. He just thought this might be the only time this could be done with low interest rates. Voting against this does not mean being against economic development. He wanted to get these projects going in communities and thought this is chance to do it. TSEP does not have enough money in it for all the needs. He thought bonding would be the way to do it.

Vote: Motion failed 8-11 by roll call vote with **SEN. BALES**, **SEN. BARKUS**, **SEN. BRUEGGEMAN**, **SEN. COBB**, **SEN. ESP**, **SEN. KEENAN**, and **SEN. LAIBLE** voting aye. **SEN. STAPLETON** voted aye by proxy.

Vote: Motion that HB 11 BE CONCURRED IN carried 16-1 with **SEN. KEENAN** voting no.

EXECUTIVE ACTION ON HB 5

{Tape: 7; Side: B; Approx. Time Counter: 4.0}

Motion: **SEN. BALES** moved that HB 5 BE CONCURRED IN.

Motion: **SEN. BALES** moved that HB000535.ACD BE ADOPTED.

EXHIBIT (fcs73a22)**Discussion:**

SEN. BALES said the amendment removes approximately \$500,000 from the Montana Developmental Center (MDC) at Boulder. Last session there was a decision to close Eastmont, which was a developmental center in eastern Montana. The testimony and all of the assurances at that time was that Boulder had sufficient facilities and buildings to handle all of the developmentally disabled in the foreseeable future and utilizing community-based housing. This was a money saving situation. Two years later there is a request for a grant to build a new building at Boulder for \$2.542 million. Part of the argument last session was Boulder was already handling the problem cases, and that was the other logical reason for going there. In the cost breakdown on the secure housing unit for Boulder is a contingency fund of \$297,000. That is nearly 12 percent of the entire amount. He was asking to do this and use this money in an amendment to amend back in the Livestock Specialist, the Forest/Urban Interface person, the Weed Specialist research people. He thought those were critical positions for the state. There was a livestock specialist in the past, and the position was cut during the last shortfall.

SEN. TESTER said it was too bad **SEN. COBB** was not in the room as this was a rather "Cobbesque" amendment. He admired **SEN. BALES** creativity. The amendment would pull \$490,000 out for some worthwhile positions. He asked if this is one-time revenue.

SEN. BALES thought this is possibly one-time money, but if that is a concern he could place it as one-time money on some of the positions. **SEN. TESTER** thought if this goes through and the positions go through, they need to be referred to as being funded with OTO (one-time-only) money so people do not get expectations those positions will be there forever.

SEN. LIND requested to ask **Jeff Sturm, DPHHS**, about the issue with the federal government. **Mr. Sturm** advised the issue was separation of individuals that are potentially a danger to others. The created a unit two years ago was to separate individuals. The issue has become larger and the population coming into MDC is potentially more dangerous than before. This is a major federal issue and continues every year. **SEN. LIND** asked that the committee resist the amendment. This is a division within the Department that was forced to reorganize through litigation. This has gone from a block grant to a provider system of care.

SEN. BALES thought there is sufficient money for MDC to get done what they need to get done without this funding.

Vote: Motion failed 9-10 by roll call vote with **SEN. BALES**, **SEN. BARKUS**, **SEN. BRUEGGEMAN**, **SEN. HANSEN**, **SEN. KEENAN**, and **SEN. LAIBLE** voting aye. **SEN. COBB**, **SEN. ESP**, and **SEN. STAPLETON** voted aye by proxy.

Motion: **SEN. LIND** moved that HB000534.ACD BE ADOPTED.

[EXHIBIT](#)(fcs73a23)

Discussion:

SEN. LIND said this amendment provides for a name change striking "developmental center" and inserting "housing for high risk behaviors". This name change was worked out between the Department and the providers and allays some of the concerns in the provider community.

Vote: Motion carried unanimously by voice vote.

Motion: **SEN. BARKUS** moved that HB 530.ACD BE ADOPTED.

[EXHIBIT](#)(fcs73a24)

Discussion:

CHAIRMAN COONEY indicated the amendment was handed out when they heard the bill.

Vote: Motion carried unanimously.

Motion: **SEN. BRUEGGEMAN** moved that HB000536.ACD BE ADOPTED.

[EXHIBIT](#)(fcs73a25)

Discussion:

SEN. BRUEGGEMAN said the amendment deals with the Historical Society complex. This is a \$40 million project, of which \$10 million is the state share with \$7.5 of it bonding, and the rest private funds. There is \$20 million appropriated in the bill and this would take it to \$30 million which is the scope of the project.

SEN. SCHMIDT asked **SEN. TESTER** to comment. **SEN. TESTER** advised this is spending authority to make up for some of the shortfall

in HB 540. This increases the authorization for how much money can be raised. It can be taken away as easily as it can be given. It is simply numbers on paper at this point in time and is similar to University building projects.

Vote: Motion carried 12-1 with SEN. STAPLETON voting no by proxy.

Motion: SEN. COONEY moved that HB000503.ACL BE ADOPTED.

EXHIBIT(fcs73a26)

Discussion:

CHAIRMAN COONEY advised the amendment strikes Section 18 in its entirety.

SEN. LYNDA MOSS said the amendment changes the way the funding will take place with a project she has been working on. It was SB 777, which did not make it through the process. That bill had a funding clause tied to HB 5 for \$20,000 for a study on cultural and historic properties in the state. It also had a funding clause attached to HB 2. This amendment takes out the clause; now it will come under the Governor's office, and there will be an executive order that establishes this cultural and historic survey. The survey will make policy recommendations to the 60th Legislature. It is also set up so they can receive other grants and contributions to leverage the \$20,000. There are architectural and engineering firms in SD 26 which she worked with in the past to do similar a historic and cultural survey in Billings. This resulted in the restoration of several historic properties for new uses.

Vote: Motion carried unanimously by voice vote.

Motion: SEN. COONEY moved that HB000533.ALF BE ADOPTED.

EXHIBIT(fcs73a27)

Discussion:

CHAIRMAN COONEY indicated the Department of Transportation has started the reconstruction on Highway 93 from Evaro to Polson. This project is unique in both its size and in the funding mechanism because the construction will occur on the Flathead Indian Reservation. It is eligible for 100 percent federal participation. Since funding for the \$133.7 million cost of the construction project is not available all at one time, the Department is using the funding mechanism authorized by the

federal government called GARVEE bonds. The program allows states to issue revenue bonds for highway construction and pay the debt service on the bonds using future federal highway funding allocations. The Department of Transportation has current statutory authority to issue the bonds and has done so. The Evaro to Polson project is made up of eight large but separate reconstruction projects, which the Department will let as soon as they are ready. Having the appropriation in HB 5 will allow the Department sufficient flexibility to let these projects quickly once they are ready. While it does not make sense to appropriate standing construction projects in HB 5 because of the large number and varied size and duration, it is appropriate for this project which is very large. All of the projects will be let in a finite period of time. The Legislature can approve the project as a whole, rather than in individual pieces. He mentioned this change will remove the funds from the cap calculation. That is appropriate because expenditures from this appropriation will begin in 2005 and, as the cap law is written, bonded projects are excluded from the calculation. The only reason this bonded project was not excluded was because the Department chose to account for the cost in a state special revenue fund rather than capital fund projects.

SEN. BALES asked about the time line before the federal government comes in with the \$133 million. **CHAIRMAN COONEY** asked **Jim Currie, Department of Transportation** to answer. **Mr. Currie** advised they are selling bonds for the full proceeds of the project. The bonds would close the following week and would be paid back through federal re-authorization money over the next 15 years.

{Tape: 8; Side: A}

Mr. Currie explained this is different than the funding for other projects and why it makes sense to do it this way. There is a set number of projects for a particular project site. There is a definite or finite funding source. **SEN. BALES** inquired, if the bonds were authorized and are being sold now, why the amendment was needed. **CHAIRMAN COONEY** advised if this motion carries this would be in HB 5; it is currently in HB 2. He would have an amendment on the floor of the Senate to remove it in HB 2. In HB 2 there is a finite period of time of two years. HB 5 is more long range. Since this is a long-range project, that is the benefit here.

Vote: Motion carried unanimously by voice vote.

SEN. KEENAN proposed a conceptual amendment for Yellow Bay water quality monitoring. In order to amend HB 5 for any of the

general fund money, it has to be taken off of the top line. He wanted to reduce the \$9.9 million one-time general fund transfer for FY 06 and \$19.4 million in FY 2007. The total contingencies in HB 5 were \$9.48 million. Of that, \$3.43 million, or 9.77 percent of the projects, is held in contingency. His amendment would reduce the \$9.9 million one-time general fund transfer in FY 2006 by \$200,000. That would go to the general fund, and **SEN. DAN WEINBERG** would have an amendment on the floor to place that at Yellow Bay in Section B of HB 2. The intent of the amendment would be to reduce the general fund cash projects contingency by \$200,000, which would amount to about seven tenths of one percent.

SEN. TESTER asked if this would pull \$200,000 across the board, and if all of the \$200,000 would go back into Yellow Bay. He asked how that compared with the previous amendments that they did not fund for Yellow Bay. **SEN. KEENAN** advised there was an amendment by **SEN. BRUEGGEMAN** for \$285,000. **SEN. TESTER** said this is a good project, and he would support the motion.

Motion/Vote: Motion to conceptually amend HB 5 carried unanimously by voice vote.

Motion/Vote: **SEN. COBB** moved that HB 5 DO PASS AS AMENDED. Motion carried 13-0 by voice vote.

Motion/Vote: **SEN. BRUEGGEMAN** moved that TO RECONSIDER ACTION ON HB 11. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 11

{Tape: 8; Side: A; Approx. Time Counter: 7.8}

Motion: **SEN. BRUEGGEMAN** moved TO STRIKE \$150,000 FROM THE TOP FOUR PROJECTS AND INSERT AN ADDITIONAL \$140,000 IN THE RANCH DISTRICT PROJECT WITH THE REMAINDER GOING TO THE BIGFORK COUNTY DISTRICT.

CHAIRMAN COONEY said the amendment would return St. Ignatius to \$500,000, Rudyard to \$524,503, Carter/Choteau County water to \$500,000, and Cascade to \$500,000. The money would be moved to item 17. **SEN. BRUEGGEMAN** indicated there would be \$140,000 for item 17 and the remainder of \$460,000 to the Bigfork District, which is in the TSEP book. That is for a Bigfork area project where there was compelling testimony about sewage flowing into the river. **SEN. TESTER** advised this is an issue they debated in subcommittee. There were amendments to put it in before, and he

thought it would have gone in before but did not. He endorsed the amendment.

SEN. SCHMIDT asked where the ranch county water project is located. **SEN. BRUEGGEMAN** advised it is in Lake County.

CHAIRMAN COONEY asked if the second project is on the bend in the Flathead River. This is a disaster waiting to happen. He said he would support the motion. **SEN. KEENAN** said there are about 30 septic tanks that are four feet above the level of the lake and about 40 or 50 yards from the Flathead River.

Vote: Motion carried unanimously by voice vote.

Motion/Vote: **SEN. TESTER** moved that HB 11 BE CONCURRED IN AS AMENDED. Motion carried unanimously by voice vote.

CHAIRMAN COONEY would carry HB 11, and **SEN. TESTER** would carry HB 5.

ADJOURNMENT

Adjournment: 6:08 A.M.

SEN. MIKE COONEY, Chairman

PRUDENCE GILDROY, Secretary

MC/pg

Additional Exhibits:

EXHIBIT ([fcs73aad0.TIF](#))